

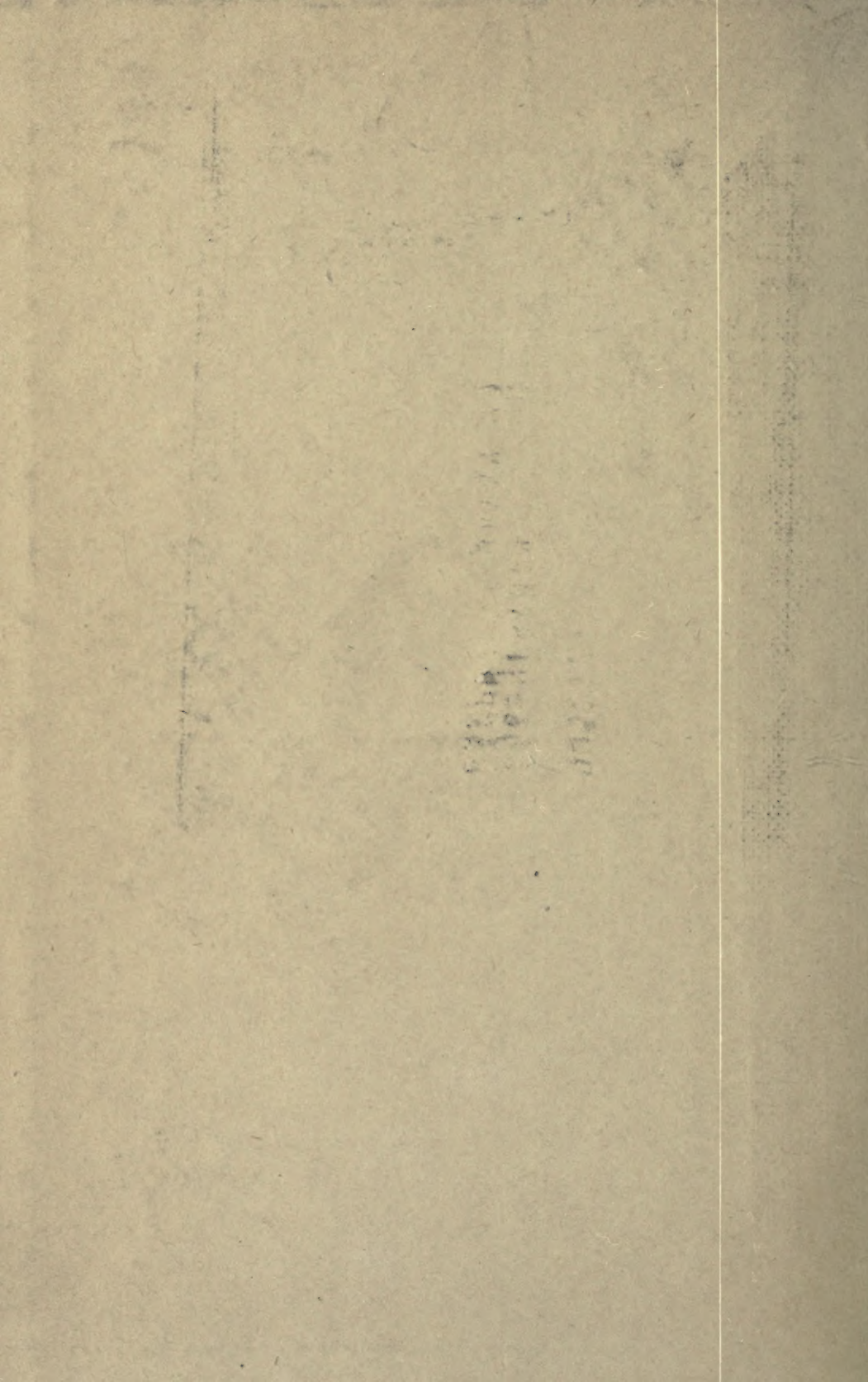
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THE OLD ORDER  
CHANGETH



William  
Allen  
White







**THE OLD ORDER CHANGETH**



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# THE OLD ORDER CHANGETH

A VIEW OF AMERICAN  
DEMOCRACY

BY

WILLIAM ALLEN WHITE

AUTHOR OF "A CERTAIN RICH MAN," "IN OUR TOWN,"  
"STRATAGEMS AND SPOILS," ETC.

New York

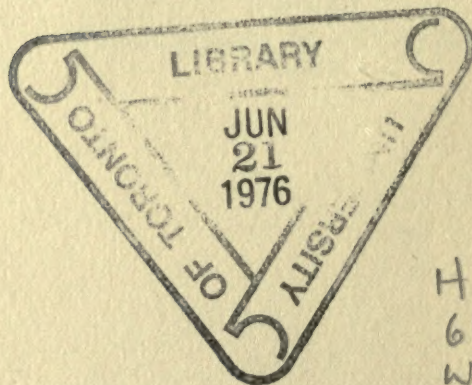
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# THE OLD ORDER CHANGETH

## CHAPTER I

### OUR DEMOCRACY IN THE BEGINNING

ANY view of a going concern, like our American democracy, inevitably must be a partial view, because it must be a fleeting one. The facts about our democracy to-day obviously are not the facts of yesterday, nor are they the facts of to-morrow. The democracy in the United States which De Tocqueville saw in the early part of the nineteenth century is not the American democracy rising to power in the twentieth century. Perhaps, indeed, we did not have a democracy at all during the early decades of the nineteenth century. Certainly that democracy passed into the more typical republican form of government during the middle and latter decades of the century. And it seems likely that we are about to revert (or progress, if you would choose that verb) from the republican form under which our nation waxed fat and strong after the Civil War,

to another form — a form participated in more largely than ever before by the voter, a form more zealous for the rights of the individual, and a form more directly guided by the masses — government “of the people, for the people, by the people.”

We are a different nation from that which De Tocqueville saw when he visited us nearly one hundred years ago. We have a different government, though our Constitution has not been changed, fundamentally, from that of the government which he saw. We live on a different economic basis than that which sustained us in the twenties and thirties of the last century. And our social organization has been improved since the days of the fathers of the Republic. A century ago our politicians and statesmen dwelt apart from the people. Alexander Hamilton longed for a House of Lords. Fancy a statesman yearning for such an institution now! The education of the masses was neglected. Schooling was difficult compared with the present facility for obtaining education. Leaders seemed to lead in that day. Now they trail at least a biennium behind the people. Americans were isolated and more or less queer when De Tocqueville saw us. The world is a snug little community now, with opinions about the inhabitants of Mars. The big house

on the hill, of our grandfathers, to-day is duplicated, where it is not vastly improved, all over the valley. We, the ordinary run of people in these latter days, enjoy comforts that were denied to the rich in Andrew Jackson's day. Hours of labor are shortened for those who work. The physical strain of the workers also has been greatly relieved in the passing century. The attitude of master and servant has been revolutionized. Brotherhood is abroad in the land. There has been an immense magnifying of the human being, since Hamilton's time; and this too despite the fact that all the little home factories are gone where men and women worked alone, and in their places are the great factories where men work by the thousands. But the worker by the thousands has the power of the sympathy of the thousands behind him. He may not be treated with contumely. In the old democracy of Jefferson's dream God sat on a golden throne on some distant orb, ruling the universe like an exalted Frederick the Great. To-day God is moving in the hearts of men; the kingdom of Heaven is within us. Yet De Tocqueville called that elder civilization a democracy. And to-day we believe that we are coming into another democracy. The two — politically, economically, and socially — are almost utterly dissimilar. Something has intervened. Something has

come into life, not only in America, but all over civilization, within a hundred years, that has changed the aspect of humanity. Something has given political control to the masses; something has given them shorter hours of work than they ever had before; more education than they ever had before; more comforts than they ever had before; more self-respect than they ever had before; more deep-set practical working-clothes — faith in the Fatherhood of God and the Brotherhood of man. Perhaps it is the vast savings of the people; certainly we have billions now for our millions of one hundred years ago. Have we bought all these blessings with hard cash? We are a thrifty people. We have grown capital — we ordinary everyday people — by the billions. The wealth of the country is our savings — whoever may happen to hold the title for the moment. Perhaps with our savings we have bought all these political, social, and economic comforts and luxuries. But how did we manage to save? What has given the democracy of the twentieth century such an enormous store of capital, as evidenced in our national wealth, compared with the old democracy of the fathers. They worked more hours, wore homespun clothes, bought few books, had few amusements, lived in primitive simplicity; certainly they should have saved more. Yet we are

richer, man for man, than they were. Something happened during the half century after De Tocqueville left us and before Mr. Bryce came back and wrote his "American Commonwealth." It revolutionized us. It was some great force — elemental, dynamic.

The force was steam — the thing that happened was the common use of steam. The nineteenth century will be known as the century made marvelous by the use of steam. Steam lightened the strain on human muscles; soon the hours of labor were shortened. The workingman got more daylight in which to look about and see how the world is put together. With leisure came reflection, with reflection came opinions, with opinions came revolt against the inequalities of men, and with that revolt modern democracy is coming. That was the social and the moral side of the discovery of the uses of steam. It had its material and economic side also. Steam annihilated distance, fostered understanding between men, set them in good houses, fed them nourishing food, made men of them. It multiplied their thrift ten and a hundred fold, and while it made them men, — democratic men, — it put their accumulated savings into the hands of trustees who became the masters of men. The use of steam stored

up either as savings or as profits such colossal sums of capital as mankind never before had dreamed of.

The savings and the profits of the multitude were trusted to the servants of the multitude — to the men with ten talents, who increased the savings fabulously. These servants had a power like that of rulers. They were rulers while they remained servants. But they were servants, not of the whole man whom they served, but only of his selfish faculties. The capitalist took the color of his master. He grew hard and grasping. Capital became a synonym for greed; the development was natural. Yet capital was not principally of the rich; it was the common hoard, the savings and profits of the whole people. So capitalism — its virtues and its vices are not the virtues and vices of a class (not of the rich, for instance), but capitalism is a part of the public character, a part of the American character in its relation to this people and this government. And when, in the chapters that are to follow hereinafter, one sees the struggle between democracy and capital, it must not be conceived to mean a struggle between the rich and the poor, but it must be recognized as a struggle in every man's heart between the unselfish and the selfish instincts of his nature for supremacy. Democracy is struggling for the rights of man against the rights of



property. The rich man often is democratic; the poor man, sometimes intensely selfish. It is not a struggle of classes, not in America; it is a contest in the heart of the common people. We are trying to do justice under new conditions in the world — conditions arising from the stupendous changes wrought to humanity by the use of steam. We are trying, as it were, to digest in our social organism this new apple of the knowledge of good and evil. We are trying to socialize steam, to make its results and achievements a part of an equitable existence — an existence consistent with “good will among men.”

And this book will try to tell, not in the language of a trained scientist, but in the words of an observer in the midst of the life that now is, something about the present status of society in America. It is an effort to tell how the man whom steam has educated, fed, housed, clad, given leisure and vision, the common man, rich or poor, is fighting with the weapons of fundamental democracy against the forces and instincts in his own soul which make for greed and oppression and misery in this land of ours. We have here a combat of the opposing forces formed by a new social substance: whose basic elements, democracy and capital (each useful in its own way), were released to the world in steam.

## CHAPTER II

### HOW OUR DEMOCRACY BECAME MODIFIED

“I AM glad,” said an Englishman as he walked down the gang plank of an ocean liner into the United States, “that I am now in a country where you can buy men only with money.” We Americans clearly do not realize our felicity. And yet, when one considers what a large number of things have moved men to wrong in other times and in other lands, one should count one’s blessings and not his ills. Of course the devil is not in chains in this country. That fact is discouraging when one remembers that we have been organized to chain him for something over a hundred years. But on the other hand, we have a shackle on his ankle and a few links forged — and that is something.

Of old, men were controlled by the lure of women, by the fear of hell fire, by the envy of social distinction, and by greed. In America at least, and speaking broadly, allowing for many exceptions, our politics and our business are not seriously affected by the siren, by the priest, or by the nobility. We have

welded that much of a chain for the devil. We have reduced his activity to greed. But the drawback is this: we have lost somewhat of finesse, somewhat of spirituality, by throwing off considerations of ecclesiasticism and of feudalism. For democracy is crass, and the very palpableness of the thing that moves us must in its nature keep democracy crass and ugly and brutal so long as we are guided chiefly by greed.

If the rich man votes only for the return of prosperity, and the poor man votes only for the full dinner pail, neither should be surprised if the other tries to rob him. For until the devil is chained he certainly will get the hindermost! If we vote only for material things, we shall get only material things. The man who coddles his stomach generally has a weak heart — likewise the nation. But with this nation of ours the most hopeful sign of the times is that we are beginning to get a national sense of our ailment. All doctors agree that it is the stomach and not the heart or the head of this people that is wrong. There are hundreds of panaceas and sure cures, but all of them aim at the same disease. In the presidential campaign of 1908 the Republicans, the Socialists, the Democrats, and the Prohibitionists proclaimed almost in unison against the extension of special privileges, — which extension is merely legaliz-

ing greed, and chiefly corporate greed. It was a clearly defined struggle between the contending forces in civilization released by steam: democracy and capital.

Therefore it would seem that in a hundred years of active life the American people have reduced the fight for social, economic, and political progress to its fundamental terms. There was greed in ecclesiasticism, but it was tintured with fear. There was greed in feudalism, but it was alloyed with the "divinity that doth hedge a king" or a baron or a lord or a knight or what not of social tomfoolery. But the greed contending with democracy is simple, primitive, without sugar coating, and with nothing more substantial to hide it than mere shallow business tradition. The church has been business; the state has been business; the nobility has been business; but now, thank heaven! only business is business. And the problem of democracy in this world seems to be to make business honest.

Now all this might seem obvious if as a nation we did not have our noses in our work. For a man with his nose in his work understands its details, but sometimes he is unfamiliar with its general effect. Therefore, to know what we are really doing in this country, and to appreciate what reasonably we may hope to do,

it is necessary to back off a dozen years or so and get a good look, from that perspective, at what we have done. And this historical view — if such a view may be had by going back little more than a decade — must not discourage the reader, no matter how unpleasant the picture may be. For it now has only an academic interest.

Twenty-five years ago — more or less — an extra-constitutional government began to take charge of this country. It extended its domain over the states gradually from east to west. This superficial government did not cover the entire country until the late nineties. But from 1897 to 1903 it was dominant, and probably in many matters it was superior to the constitutional government. There was the constitutional government and the business government in the city, in the county — where county organizations prevailed, — in the state and in the nation. The constitutional government generally provided for the punishment of crimes of violence, whether against the person or against property. The burglar, the petty thief, the cheap swindler, the murderer, the highwayman, the thug, — if he did not operate at the polls, — the barnburner, the rioter, the forger, the counterfeiter, the vagrant, and the common liar found themselves facing the written law. But

certain crimes of cunning, if capital invested was sufficiently large, were protected by the superficial government. Perhaps to be entirely safe one should say that the protected crimes of cunning were those crimes aimed not at private property so much as at public rights; protection was not offered to those who swindled individuals. But those who in the name of the industrial and commercial progress of the land took what was not their own from the public, or those who assumed to add to the national production and accumulation of wealth, — to increase American capital, in short, — they came under the jurisdiction of the superficial government and too frequently they were immune from the constitutional government. Democracy seemed to maintain its government, punishing crimes committed by individuals against individuals; and capital maintained its government to protect capital in its crimes against the public.

Finally the decisions of the courts were colored in favor of those who enjoyed special privileges until the special privileges became vested rights, and thus specially privileged classes captured the Constitution. Then the two governments merged.

For those who enjoyed special privileges in the investment of their capital, — franchises, public grants, and the like, — laws were enacted, interpreted, and

administered. But the public executives and legislators and courts were not consciously or maliciously venal, — not in the least. They were merely following the spirit of the times. There was one jurisdiction for private business and quite another for the public business. And when little by little the alliance was established between business and politics, — between capital and democracy, — the two governments were cemented in the customs and traditions of the people.

Stories differ as to how this alliance was formed. There are those who believe that it was projected deliberately and with malice prepense by a group of business men operating in public service corporations. But it seems reasonable as well as just to believe that ignorance and prejudice produced demagogues in the days following the Civil War, and that business went into politics in self-defense. But when business got into politics, it found that a dollar invested in a campaign fund brought on the whole more direct results than any other dollar that might be invested — up to a certain maximum of investment. So money went into politics with all the precision and caution that always has directed money in any of its activities.

And this was the way money went into politics: The party system had built a machine made for the

uses of corruption in those days of the eighties and nineties. Candidates for all offices, legislative, judicial, and executive, got their elections and appointments from the party organizations. The apathy of voters made party success more or less dependent upon getting all the voters to the polls, and money became necessary to hire carriages and workers to bring voters to the polls, who would vote presumably for the political organization that brought them there. Also campaign speakers had to travel about the country, literature had to be distributed to convince the voters of the justice of a party's claims to the voter's support.

These were legitimate uses of money. For such purposes as these any honest politician might ask any honest business man for campaign contributions. But from the honest uses of money in politics grew the illegitimate uses of money. Hiring a man to work at the polls shaded gently into hiring him to vote for the party that paid him for his work. The expenses of campaign speakers gradually grew and included pay for personal influence, and the fund used for printing literature to convince the voters became enlarged to pay for subsidized newspapers, and to corrupt the channels of publicity in various ways. Through the party organization money got into poli-



tics in a systematic and altogether a comfortable manner. There was no need of individual bribery; there was no scandal attached to the purchase of special privileges. The purchase of a party organization in a city or a state or a nation became so brazen that men thought it was clean. Did a brewer desire his beer sold in the dives and saloons of a certain city to the exclusion of other brews? Well and good, — he contributed sufficient funds to the party organization of the dominant party in that city to “control” it; that is to say, he made the best bid. So when a public prosecutor was elected by that party, he harried the users of the rival brews until they bought only the administration brand of beer, and then they were unmolested. Did a street railway desire a city franchise, it gave money to the dominant party in the city, or if there was any doubt about the election, the franchise seeker contributed money to both parties in the city where he desired to loot. After the election had been won with the would-be looter’s money, the granting of the franchise to the benevolent looter became an administration policy. The man who opposed the franchise was a political outcast. Did a railroad desire immunity from annoying enforcement of laws enacted to satisfy public clamor in any state, it contributed money to the party controlling that

state, and railroad commissioners were appointed at the suggestion of the lawyers for the railroad.

It was but a natural step in the growth of the political organism, for the attorneys of all the railroads in a given state to come to a gentlemen's agreement about the politics of the state. Moreover, it was merely growth by accretion that the attorneys for the brewers and the packing houses and the insurance companies and the text-book publishers united with the railroad attorneys, thereby building up in each state a community of interests. Often this community of interests was erected around one man; and generally he was not even chairman of the local party organization. He was the man who controlled the party chairman; the party chairman and the governor and the speaker of the lower house in the legislature and the leader in the upper house were merely parts of the machine. The boss put the parts together. He was the god from the machine. And the machine gave direction to affairs in the state.<sup>1</sup>

<sup>1</sup> In the New York insurance investigation of November 16, 1905, we find B. B. Odell testifying concerning certain insurance legislation:

"Q. You have said that you told Mr. Hyde that there would be no such legislation as suggested by the Ambler bill?

"A. In my opinion.

"Q. How could you control that?

"A. I could not.

Thus the state party organization became the superficial government — the government of greedy capital enjoying special privileges, lawful and unlawful. Public officials, recognizing the force of the machine in which they were working, rarely turned against it.

Now it is not pleasant to recall American political conditions as they were in the late nineties. Yet those conditions were founded so firmly on local public sentiment and represented so thoroughly the judgment of the average man, that — bad as they were — it becomes necessary to the uses of this discussion to record them here briefly. For those conditions furnish a starting point in the story of recent progress in this country, and only as we take a square look at the place where things were at their worst, may we realize how much better they have grown.

Politics in America a dozen or fifteen years ago was founded upon the boss system. At the bottom, in the smallest political unit, was the precinct boss. Delegates to local party conventions were elected from precincts or wards or townships.

“Q. How could you in any way promise him immunity from action of that kind on the part of the members of the legislature?”

“A. Only from my knowledge and experience in the legislature.”

“Q. That was from your familiarity with the situation?”

“A. Yes.”

When money went into politics it went there to protect property.

The party convention in a county, town, or city was made up of from two to four hundred of such delegates. They nominated the local county, township, ward or city candidates for the offices that composed the local government. Generally county governments prevailed in rural communities in the West, in the Middle states, and in the South. The precinct boss at the bottom of the system generally said who should go to the county, town, or city convention as delegates. And in any precinct of two hundred votes or such a matter, not over fifty people in either party paid serious attention to politics. And year after year the same men represented each precinct in the local convention. They were the men who obeyed the dominant precinct boss at the base of things. He was not an officer of the government, but he controlled delegates to local conventions which nominated candidates for all the offices of the local government, so he became an actual part of the local government of every community. Half a dozen precinct bosses controlled the average county or small city. And the indomitable man among them controlled them.

This indomitable local boss had relations with the group of bosses that controlled the district or the great city. He was one of them. He controlled the

larger group if he was strong enough. And he had relations with the still more powerful group of bosses that controlled the state conventions and state legislatures of his party. If he was one of the larger groups, he was powerful enough to say who should be nominated for the legislature in his county, who should have the judicial and congressional nominations in his district, and who should attend the state convention as delegates to name the candidates for state office. His nose was above water. He had a status in the politics of his state. He was some one. Sometimes he was a member of the actual organization of his party; at other times he preferred to name those who should be members. But always he controlled; and the fifty men in either party in each precinct who paid intelligent attention to politics, together with the fifty men in each of a score of other precincts in the town or city, knew this high-grade boss, went to him for favors, considered him as the vicegerent between them and the big boss who controlled the group of bosses in the inner temple that controlled the state.

The extra-constitutional place of the boss in government was as the extra-constitutional guardian of business. If a telephone company desired to put its poles in the street, and the city council objected, straightway went the owner of the telephone stock to

the boss. He straightened matters out. If a street car company was having trouble with the city street department, the manager of the street railway went to the boss, and the street department became reasonable. If the water company was harassed by public litigation, the boss arranged a friendly suit to settle matters. Always business was considered. And in some exceptional cases, vice was considered business. That was because vice paid rent, and property interests could not be disturbed. The boss, little or big, had the greatest respect for business little or big. And this respect came to him not as a peculiar revelation, — and perhaps not chiefly because business paid money to politics, — but because he realized that all of the people about him felt as he felt. He merely reflected his environment. Otherwise more than fifty people would consider the little precinct boss obnoxious, and he would lose control, and a different group would conduct the public business of the precinct. So the secondary boss — the town or county boss — saw that local business was not hampered; and when the railroad company in the state desired to do as it pleased, the boss of the secondary bosses protected the railroad. And the people protected the bosses, and business big and little paid money into the party committees; and as the bosses controlled the com-

mittees the sale of special privilege was simple, legal, and unquestioned. Money in politics was there for the purpose of protecting the rights of property under the law, as against the rights of men. So prosperity dwelt among the people. The greed of capital was rampant, the force of democracy was dormant; "and the fool said in his heart there is no God."

But the folly grew national. Railroads, being the most important public service corporations in any state, had the closest relations with the state bosses who controlled members of the legislature, so the legal departments of the railroads named United States senators. In those days in many of the states a candidate for United States senator usually went to the law departments of the railroads in his state, and made his peace. Otherwise he was defeated. Now, man is a grateful brute, and when federal judges were to be named the law departments of the railroads generally had a judicial candidate in view. And the senator whose business it is to nominate federal judges for the President of the United States to appoint, subject to the Senate's confirmation, generally chose the man who was satisfactory to the powers in his state that made him senator. And as there are two sides to every lawsuit, whenever the interests of the public

and the interests of the railroad clashed in court, it was as easy to see the railroad's side as it was to see the other side, so the mass of federal decisions for years favored the railroads. And thus the superficial government, in a most natural way, captured the Constitution.

(In parentheses here it seems necessary to inquire if this capture of the Constitution by our only aristocracy — that of capital — was not in truth merely a recapture of what was intended in the beginning by the fathers to belong to the minority.<sup>1</sup> The checks and balances put in that Constitution to guard against the rule of the majority protected slavery for fifty years, and perhaps they bound the nation to the rule of the privileged classes in the nineties. Perhaps these same checks and balances were put into the Constitution deliberately — the judiciary which vetoes statutes and remakes laws, the rigidity of the fundamental law to amendment, the remoteness of the senators from popular election and control.

Certainly these checks and balances are chafing us now in our struggle to express the widening moral intelligence of a democracy in terms of government. And later it will be necessary to return to this conjec-

<sup>1</sup> See "The Spirit of American Government," by Professor J. A. Smith. Macmillan.



ture and examine it in greater detail. But the query in parentheses should at least be set down here for what it is worth.)

The courts were not corrupt. They were merely human. The people desired business protected. The color of the times crooked and the judges got it on their spectacles. They were not to blame. They merely saw as we all saw in those times. For politics was no worse than business; and business was no better than the people who did the trading. And while the country was honest, it had been through a serious, biting, world-wide panic — the great panic of 1893. So prosperity seemed the chief end of man. The prosperity ideal occupied the mind of a nation. Every man was willing to yield just a little bit for the larger good of a prosperous nation. And all this yielding made a mighty slant in the line of probity when each man, among seventy millions of people, bent ever so slightly to it. And that is why those at the top, as we looked up and saw them fall, seemed so much more out of plumb than we were at the bottom. But in fact they were at the same angle with relation to exact honesty that we all were. Big bosses and little bosses, big business men and little business men, we were all tarred by the same stick. It was a case of stretching the general welfare clause of the federal

Constitution to a bad end, which at the time seemed worthy.

Now, here is what may be called a secondary stage of the disease that was creeping upon the people. From 1884 to 1894 there were clean cities and clean states; on the whole there was a clean federal government, and certainly the great mass of business transactions were clean. Evils were sporadic, local, and not of first importance. Then came Mark Hanna, the maker of a President. Under Hanna the king's evil of business in politics became chronic in the politics of the nation. He organized the state bosses and thereby organized the public service business of the country and the public service politics of the country; he brought capital and democracy together, and became the dictator of the superficial government of the United States. But for the strength of McKinley, Hanna would have become an autocrat. In him were united the greedy forces of business and the greedy forces of politics. For putting America thoroughly upon a business basis, the country owes to Hanna whatever gratitude is due a man who brings out the rash, makes the impurities plain, and aids diagnosis.

Those were the good old times of business cheer in the reign of Hanna. The knighthood of commercial

license was in flower then. Hanna gathered tribute from certain great business concerns desiring protection and privilege in the government, and sent the money from the national central committee of his party to the various state central committees of his party, and they, in turn, sent it to the county committees and district committees and city committees of his party. Incidentally the local committees kept on levying upon such persons and corporations at home as seemed to be fair prey. But local levies and assessments were insignificant. The fountain of all public corruption came from above. The national committees of both great parties organized the sale of commercial indulgences into a fine art. One was as bad as the other, save that the Republicans offered much the better market.

So certain insurance trustees used the money of their trusts for personal gain; certain railroad officials shared in the profits of favored concerns; rebates were granted to shippers and special rates to localities; import tariffs were made to build up private business; the stocks and bonds of railroads and other public service corporations were increased illegitimately, and the people were taxed to pay dividends on fictitious capitalization and interest on fraudulent debts. Corporations were formed under the protec-

tion of the state, and the sole business of these corporations was to levy tribute from the people of the state that protected them; morals in high finance became archaic in certain altitudes, and the success of success in a few restricted areas of business became its moral and its legal justification.

It should not be necessary, yet it is only just, to say that the area of dishonesty in business and even in politics was not wide — though it was important. The great bulk of business was honestly conducted, and the vast majority of men in politics were above reproach. And even those who did wrong for the most part did it unwittingly. The sin of Hanna was not a specific intentional debasement of our politics and corruption of our business. He did what he did by his example, by his influence, by his point of view. With him, in all sincerity and in all candor, business was the most important consideration, and prosperity for the nation was the one end and aim in his soul. He saw that prosperity threatened in the campaign of 1896 by the free silver craze. He fought that craze with entire propriety; he fought for business stability with the utmost sincerity and with all good will; he won that fight, and it was the most natural thing in the world that he should consider business stability an end rather than a means of

national happiness. He was our most picturesque national leader in those days. McKinley was never dramatized as the hero of the play. He was what dramatists might call the "walking gentleman" — strong, of course; honest, certainly, but not the hero of the times. Hanna was the man in the public eye. He was the man who bade men come and go at his beck and call. He was the boss of the bosses, and, as the ruler of the superficial government, Hanna guarded business; McKinley as the head of the constitutional government preserved the traditional Constitution. One was the ruler of, by, and for capital; the other represented democracy. The egoistic forces of steam were throbbing vigorously through the nation, but the altruistic atoms were not losing force. They were gathering strength.

In those days as United States senators for the most part truckled to Hanna, and as the United States senators had the real choice of federal officials, especially of federal judges and officers of the federal courts, the United States Senate became the organ, — not of the traditional constitutional government, but of the real government, the merged government of money and men. And courts — judges, marshals, prosecutors, and clerks of the courts and various arms of the law — unconsciously took the color of Hanna's

cast of thought. They gave allegiance to the court of Hanna and prosperity, rather than to McKinley and the people. So district attorneys in the days of Hanna were not bringing stock manipulators to the bar of justice; judges were not instructing grand juries to probe into crooked railroad management; United States marshals were not laying information before the courts of the crimes of the trusts. For to do those things would arrest prosperity. And prosperity was the god of the superficial government of the times. Business was above the written law of those days.

And no one was to blame more than the people themselves. They got exactly the kind of a government they desired. The flexibility of our Constitution was never more admirably presented to the world than it was in the days of Hanna. Public sentiment governed, and the great mass of the American people sincerely upheld the government of Hanna without questioning its divine right to administer the affairs of this country. For if the Democratic party had won in the election of 1900, it would have been expected to follow in Hanna's footsteps, to maintain prosperity at any cost, and to protect business. For we were a money-mad nation. And when stocks and reputations began to shrink in 1903, when great

concerns began to totter and their heads to die of shame, as they met a broadened public conscience, it is miserably sad that we should all not have suffered with those in high places, for we were as much to blame as they were. They merely epitomized success as we considered it. They were our models, and our superior virtue was an afterthought — a result perhaps of our failure to attain their heights, or at least to meet their temptations. They suffered, we jeered, and God judged.

But now conditions are changing. Even when the knighthood of business was in flower there was the worm in the bud. There was the Spanish War. The spirit of sacrifice overcame the spirit of commercialism. Hanna lost control; the country declared war, and after waiting to prepare for it as best he could McKinley proclaimed it. The retention of the Philippines, which followed war, offended some of the quicker and more enlightened consciences of the people; but the 'crowd-conscience of the nation saw with a deep subconscious wisdom of national genius that if we could learn to sacrifice our own interest for those of a weaker people, we would learn the lesson needed to solve the great problem of democracy — to check our national greed and to make business honest. For business may not be made honest by

vicarious sacrifice, but only as each man is willing to sacrifice himself. The problem of democracy is at base the problem of individual self-sacrifice coming from individual good will. We cannot hope to socialize the forces of steam in our civilization until we control and socialize ourselves.

And now for ten years there has been a distinct movement among the American people, — feeble and imperceptible against the current during the first few years of its beginning, — a movement which indicates that in the soul of the people there is a conviction of their past unrighteousness. During the recent years last past that movement has been unmistakable. It is now one of the big self-evident things in our national life. It is called variously: Reform, the Moral Awakening, the New Idea, the Square Deal, the Uplift, Insurgency, and by other local cognomens; but it is one current in the thought of the people. And the most hopeful sign of the times lies in the fact that the current is almost world-wide. The same striving to lift men to higher things, to fuller enjoyment of the fruits of our civilization, to a wider participation in the blessings of modern society — in short, to “a more abundant life” — the same striving is felt through Europe and among the islands of the sea that is tightening the muscles of our social and commercial



and political body. And it may be worth while to look about us and note the changes that are coming to us in the days when they are in the making. For

“The old order changeth, yielding place to new;  
And God fulfils himself in many ways,  
Lest one good custom should corrupt the world.”

## CHAPTER III

### THE BEGINNINGS OF THE CHANGE

THERE seems to be a persistent instinct in man to grow spiritually. The missing links between the protista and the elephant do not disprove that a chain joined them once; but there are so many missing links — links which are not now growing across the gaps and which in the memory of man never have grown — that the assumption of the chain's existence is only as strong as the evidently broken chain that lies along the field of human knowledge wherein science is burrowing in geology, biology, embryology, and Heaven knows what other ologies and isms. But we do know that after the chain has reached man it is an unbroken chain. We do know that men grow. The chain between the bushman and the President of Harvard University we can find, and we may see all of its links. What is more, we can feel the pull of it in a score of human institutions.

It is demonstrable that the growth of man is governed by two strong tendencies — that to help himself, and that to help others; we call these tendencies

selfishness and altruism, self-preservation and group-preservation. And we know that the growth of a people is measured by the scope of the group which the average man in it is disposed to consider as part of his individual concern. As inventions have lightened the burdens of men, the sympathies of men have widened. The savage discovered the uses of fire and acquired a family. He invented a wheel and organized a clan. Yet he was little better than a savage. When he had fires and wheels and levers he had faith enough in his fellows to get along with them in a tribe. He was well along on the highway to progress. Writing spread human sympathy from the tribe to the state, and man began to be civilized. Steam widened the scope of human brotherhood from the state to the confederation of states and gave us civilization of the modern type. Of course this national feeling will extend itself. But now only the picked members of any nation transcend its boundaries in their love of kind and extend it to humanity without regard to race or color or nation or state or tribe or clan or family. Yet until life comes to that, fundamental democracy in this world will not have reached its growth.

We like to think in America that we are a democratic people. We point to our Declaration of Inde-

pendence as a great democratic document, as it is; yet our weakness as a nation is that we have allowed the Declaration to remain a mere declaration, while we have operated our nation under a constitution which puts checks upon democracy at every turn. Democracy has gone this far: that the average citizen is willing to admit that he is as good as any one else, unless the other man be exceedingly rich. But the average man is not instinctively willing to admit that every one else is entitled to every opportunity before the law that he has. So our democracy is not full-grown. But it is growing. The instinct for growth seems to abide with this nation. In the battle between the Declaration of Independence on the one hand which declares that we are all equal (and obviously means that all men have a right to display their inequalities), and on the other hand the Constitution which annuls the Declaration by its checks on the majority, there is a strong movement among the people toward the Declaration and away from the Constitution. It is unconscious, of course. The Constitution still remains a political god of great power, and the checks and balances still are regarded as divinely appointed. But nevertheless Americans are drifting toward democracy and the Declaration, and away from the financial oligarchy protected by

the Constitution. Steam, that made our nation possible, is slowly adjusting itself to our life — gradually becoming socially digested. And it is worth while to note how far the drift toward democracy has carried us in the last quarter of a century.

It is difficult to say of any current just where it begins to turn. This is especially true of a current in human affairs. Beginnings are so small, and growth is so slow, that it is empirical to declare that in the early nineties in America the tendency to democracy began which is now so obvious in our politics. But it is likely that one of the early manifestations of democratic growth in America began with the adoption of the secret ballot. The secret ballot is one of the first shackles that democracy put upon capital by abolishing direct bribery as a factor in American politics. The bribery which remains, even in our great cities, and in our rotten boroughs on the Atlantic seaboard, is negligible in the total vote of the nation. And similarly the direct bribery of public servants is a negligible force for unrighteousness. The people and their servants made a mighty gain over money in politics and for democracy when they established the secret ballot, because money invested in politics is invested to protect the rights of property against the encroachments of the rights of men.

And, therefore, as money is forced out of politics the rights of property grow narrower and the rights of men grow wider. Now money — which is the synonym for aristocracy in America — is essentially thrifty. It will take few chances; and if it does not know positively that the vote it buys is delivered, money will not invest. And on the other side of the bargain, the voter who is not tempted to do the dishonest thing begins to see the honest thing. So righteousness began to get a little elbow room.

The secret ballot, which came to Americans without the influence of any great leader, which was adopted in state after state without a political revolution, was the first unmistakable evidence that we see upon the tide, in looking back, to show where the turn in the current actually began. But for several years after the change the current became an under-current. Persons desiring to control politics in their own interests were not estopped, but they changed their methods to suit changed conditions. And it is only fair to say that these persons acted as unconsciously as the people.

There are no heroes and villains in life. There are forces in life; there are forces in politics; there are forces in men; in every individual there is the selfish and the unselfish — the egoistic and the altruistic

tendency. And so in our national life the democracy is not one entirely good and true and beautiful set of men, struggling for a common good against the aristocracy, another entirely bad set of men. The struggle between democracy and aristocracy in America is in every man's heart. It is fundamental in our lives. When we find that the millennium did not dawn after crass bribery had been abolished by the introduction of the secret ballot, we must not assume that a number of men of wealth conspired deliberately to postpone the sunrise. We all conspired; we were not ready for the sunrise. And so when bribery, which had been crass, began to grow refined, when men were no longer paid to vote either at the polls or in office, we find the selfishness of men manifesting itself through the party system. That selfishness massed is the American tendency to aristocracy. It is the alliance of big business and little business against altruistic growth — against democracy.

So the American aristocracy moved its forces upon the party system and controlled it, but with automatic precision democracy began to attack the party system. Now, even before the nineties there were the mugwumps, who advocated independent voting. They also attacked the party system. But their efforts

were sporadic. Democracy seems to have set about to capture the system, not to destroy it, for democracy is organic.

Ever since the party as a functional part of this government became established in our American system, it has been undemocratic. It is organized from the top downward. In the election of delegates to conventions to name candidates for offices, the hold-over officers of the party — the precinct, the ward, the county, the state, and the national central committees — are powerful agencies in determining the course of the party. Central committeemen under the old party system of nominations can perpetuate themselves, can dictate party nominations, and can formulate party policies. A score of active men organized in a precinct under the old convention system generally controlled the sentiment of a hundred of their unorganized fellows. The few ruled the many. That is aristocracy. We have confused aristocracy in this country with a titled nobility. But wherever the few rule the many, whether wisely or unwisely, whether by virtue of learning or birth or activity, or by the use of money — that is aristocracy. Under the party system through party conventions where great political power was delegated without recall and without much direct responsibility, there grew



up an aristocracy of politicians. The caste was perpetuated by the sale of special privileges.

So we were ruled under the party system by an aristocracy which was financed by greed, and it was the problem of democracy to break down that aristocracy. The power had to be taken from the committeemen and delegates and distributed among the people. That always could be done by breaking the machine of the moment or of any locality and establishing another machine. But that remedy, while it satisfied the moment, was not a permanent cure. The cure lay in changing the system.

And that democracy is doing in America to-day through the establishment of the direct primary system of nomination of party candidates for public offices. Now, the direct primary is no new thing. It is almost as old as the party system. In this country it was known as the Crawford County plan, and it has been in use in many counties over the land for forty years. But it was purely local, subject to little legal restriction and always under the direction and auspices of the district, state, and national machines. So it was not effective. Until the primary became a state institution, regulated by the state, by state laws, a part of the government of the

state, a state institution in name and in fact, the primary was of little consequence.

Broadly speaking, there are two types of primary in the United States: the Northern and the Southern type. The Northern type is this: Upon a certain day, at least sixty days before any general election, and at a certain place in each precinct, the sheriff of a county calls a primary election at which all parties are compelled to participate and vote for the nomination of all officers from township trustee to United States senator. The room wherein the election is held, the voting booths, the election judges, and the printed ballots are paid for out of the county treasury. Candidates for nomination to the various county offices are placed upon the ballot by petition, filed with the county clerk, at or before a stated time, containing the certified list of names of petitioning partisans of the candidates. Candidates for state offices, including United States senator, are placed upon the ballot upon petition of a certain per cent of the total party vote in the state, or in a certain number of counties of the state, filed in the office of the secretary of state. In most of the states which have a primary of the Northern type, separate ballots are printed, one for each party; and when a legal voter appears at the polling place he is given his choice of

ballots, and if there is a doubt about his party fealty, that is to say, if a Republican challenger suspects that the Democrat is voting a Republican ballot, the Democrat is compelled to swear in his vote just as he would at the regular election.

The votes are counted and sent to the county clerk, who in turn certifies the vote on county candidates to the local authorities, and who in turn certify the vote upon district, state, and senatorial candidates to the secretary of state. A plurality nomination prevails in all of the Northern states on all county, district, and state offices, except in Washington. There a majority is required.

Certificates of nomination are issued in all of the Northern states by the secretary of state to all state officers and by the county clerk to all county officers. The nomination of United States senator marks the most radical difference in all the various primary laws. Oregon has the most radical departure from the ordinary primary law. It puts the name of each successful party nominee at the primary for the Senate on the ballot at the general election. And the majority or plurality vote upon the names of these candidates for United States senator at the general election forms what might be called the plebiscite which advises the legislature as to the opinion of the people about the

two candidates. This in effect gives the people direct vote on United States senator. This Oregon plan is also in use in Nevada, Nebraska, and Idaho.<sup>1</sup>

In one, Dakota, if there is no majority nomination in the senatorial race, or no candidate gets over thirty-five per cent of the party vote, the two highest senatorial candidates go before the people in a second primary at the general election. In Ohio the vote on United States senator is merely advisory. In Kansas the vote is segregated by senatorial and representative districts so as to preserve the integrity of the legislative and senatorial districts. This plan does not provide for the absolute rule of the majority. But there is something to be said for the integrity of the legislative district, and it prevents the larger cities from overcoming country districts.

In Missouri, for instance, Governor Folk, in his senatorial race in 1908, carried something like eighty-five per cent of the counties, and was beaten by Senator Stone, whose chief vote was in the two cities of Kansas City and St. Louis.

Missouri has what is called the split primary; that is to say, the primary for the nomination of all state and county officers is held early in August, as it is in most of the states of the Middle West. But the

<sup>1</sup>See Appendix, p. 264.

senatorial primary is held at the general election. This is unfair, because it deprives the people of knowing what kind of a man a party will nominate for senator; so that they cannot vote for or against the legislature which will elect the party's candidates. In all of the states the laws governing campaign expenses at the election and limiting corporation contributions operate at the primary, as also do the bribery and corrupt practices acts of the various states.

The Northern states having this type of primary, either in their statutes or their fundamental laws, are Oregon, Washington, California, Nevada, North Dakota, South Dakota, Nebraska, Kansas, Oklahoma, Missouri, Iowa, Michigan (with certain optional provisions), Wisconsin, Ohio, Illinois, Idaho, New Hampshire, which does not include United States senator, and New Jersey. Minnesota and Pennsylvania have primary laws providing for the nomination of county and district officers. The state of Louisiana is the only Southern state which has adopted such a primary. The legality of this Northern type of primary has not been generally questioned in the courts, though in Illinois, for some curious local reason, the state supreme court has declared three primary laws unconstitutional.

The second type — the Southern type — of primary is entirely optional. It is not paid for by the state, and the option is left to the state and county central committees of the parties. The Southern primary is under the state law in that the bribery and corrupt practices acts and campaign contribution acts govern, but without penalty in some cases, and is entirely conducted by the parties' central committees. In Texas the votes are counted in various conventions, either county, district, or state conventions, before which the candidates would come for nomination. And these conventions ratify the vote of the party, but almost without exception the Southern type of primary is exclusively used by the dominant party. The cost of the primary is so high that the minority party cannot afford to join in it. The result is this, of course, that we have a democratic expression in the Democratic party and an aristocratic expression in the Republican party of the South. Democracy prevails in state affairs and aristocracy in federal matters. Therefore in the South, generally speaking, the aristocracy is more or less colored, but none the less an aristocracy, and this aristocracy, like all aristocracies, is arrogant and defiant of local sentiment and feeling. But so long as the democracy will not tax itself to compel a democratic expression in the minority party,

the aristocracy will continue to dominate Southern federal affairs.

In most of the Southern states the name of the candidate for United States senator appears on the ballot, and the plurality nominee is indorsed by the legislature. Texas has an admirable plan which should be adopted all over the Union. It is an initiative and referendum proposition, which forbids the state convention to indorse any proposed legislation which has not been voted upon at the primary upon popular initiation, and propositions are put on the primary ticket by petition just as candidates are put on. The Southern type of primary prevails in Arkansas, Texas, Alabama, Tennessee, Mississippi, Florida, Georgia, South Carolina; and with certain modifications, in Virginia and Kentucky. This includes all the states which have a primary vote on all state, county, congressional, and senatorial candidates. There is a hybrid type of primary in Maryland and another in West Virginia which is of little use.

Every one of these state fights for a state-wide, state-controlled primary law has been almost exactly like each of the others. When the demand for a state-wide primary is incipient in a state, the machine passes a law that means nothing. It bears the primary name, and gives nothing to the people. It

merely saves the face of the party by "redeeming" a party pledge, thus giving a talking point to campaign orators. Sometimes this law satisfies the people for a few years. Then the demand comes up again, stronger than ever, and the machine leaders begin to combat it. They try legislative jockeying with it. They smuggle it into unfriendly committees. They report bills with "jokers" in them. But when a primary law leader is developed in a state, then the fight begins. It is the game to begin compromising with that leader; to offer him a primary upon city and county officers. Next congressmen are put in; then governor; after that state officers, and finally United States senators are offered. But before the machine surrenders United States senator, it is the common machine tactics to go through three stages of compromise: First to offer an advisory vote on senator which shall not be binding unless there is a majority vote. When that is rejected, the machine always offers to split the vote on United States senator, putting it off until the November election so that the people will not know whether the corporation candidate has won, until it is too late to defeat the legislature of the shameless party that named the corporation candidate; and finally, the machine offers to have the United States senator



nominated by legislative and state senatorial district majorities rather than by a state-wide vote. Then the machine surrenders. That is the last ditch. And it will always surrender if the leaders for primary reform refuse to compromise and keep on fighting for the good law without turning into traps and pitfalls. Compromise is the deadly menace of every primary fight.

The rise of democracy in the Middle and Southern states, across the Mississippi Valley, and along the Pacific coast has been marked by another indication that the people know, either consciously or sub-consciously, where the dams are in the current of progress toward self-government. For not merely in the West and South, but all over the country, the people have passed laws compelling candidates and party committees to file statements of their expenditures and their sources of income, and many states have enacted laws limiting the amount of money that candidates or committees may spend in any primary campaign or in a campaign before a general election. These laws are becoming universal. Publicity of expenses is required of candidates and party committees in Alabama, West Virginia, Wisconsin, Nebraska, Kansas, Montana and Washington; and campaign expenses are limited either as to amount

or as to the right of corporations to contribute in Arizona, California, Colorado, Missouri, Oklahoma, Nebraska, North Dakota, Minnesota, Indiana, Pennsylvania, New York, Connecticut, Massachusetts, New Hampshire, Florida, Texas, Oregon, and Arkansas.

The movement to divorce the corporation from politics is so general that a federal law has been enacted limiting campaign contributions. And for the first time in the history of the United States the people know now exactly how much it costs to conduct a national campaign and from what sources the money comes. No more important step toward government by the people, for the people, has been taken in this Republic since its beginning. It is true that in many states the law is a form only; but the fact that it is a law indicates a tendency in American thought which eventually will express itself in custom and usage as it is now expressed in statute. For when the people know where to strike at an evil, they always hit it. And it is safe to say that the decree of divorce between business and politics will be made absolute within a few years. Such flagrant liaisons as that which enacted the tariff bill of 1909 will serve to make the relations between high politics and high finance so obvious that prohibition will be easy. Democracy

proposes to put capital out of politics; so that the rights of men where they conflict with the rights of property may be impartially defined.

To realize the change that has come over the country in the matter of campaign publicity and campaign contributions, it should be remembered that in 1896 Chairman Hanna, of the Republican National Central Committee, sent money into practically every American state to help his party. Chairman Jones, of the Democratic committee, had less money than Chairman Hanna, but he sent it out into the country to do what it could. In 1908 the various states sent money to the national committees, and practically no money was sent from the national committees to the state committees, except that which came through the congressional committees of both parties. The need of reform in congressional party committees was made manifest in the tariff debate of 1909. But the election of 1908 was an honest election. To prophesy such an election ten years ago would have marked the prophet for a visionary. And to have told the campaign managers of '84 or '88 that within a quarter of a century the whole nation would be voting a secret ballot, for candidates nominated in two-thirds of the American states by a direct vote of the people, without the intervention of

conventions or caucuses, and that further than that every dollar spent by a candidate or by a party committee would have to be publicly accounted for, both coming and going — such a tale would have set Quay and Whitney and Clarkson and Dudley and the managers of those days to cackling in derision until they were black in the face. It was twenty years ago that Senator Ingalls of Kansas, one of the cleanest men in public life in that day, looking ahead to the limit of his vision, said: “The purification of politics is an iridescent dream.”

But the secret ballot, the direct primary, and the purged party — which are now fairly well assured in American politics — do not set the metes and bounds of progress toward self-government in this country. They are fundamental reforms, it is true, and they are the steps that are necessary before there may be any real forward movement. For it will be seen that each one of these movements is a leveling process, a tendency to make money, capital, property, wealth, or financial distinction count for nothing save as an indirect influence in the ballot box. Each of these innovations, the secret ballot, the primary, and the reformed party, is a step toward democracy — a step toward the Declaration of Independence and away from the Constitution, which so feared majority

rule that the majority was hedged about with checks and balances at every possible point. In the early days of the Republic the people annulled the Constitution by getting a direct vote on the President, and thus obtained the executive branch of the government. Now they are capturing the legislative branch through the primary, which to-day puts over half the United States senators under the direct vote of the people. When one stops to think that in Oregon, Washington, Nevada, Idaho, California, North Dakota, South Dakota, Nebraska, Kansas, Oklahoma, Texas, Louisiana, Arkansas, Missouri, Iowa, Wisconsin, Ohio, Alabama, Mississippi, Florida, Georgia, Tennessee, South Carolina, Virginia, New Jersey, and Kentucky, United States senators at the next election will go directly to the people for nominations, and not to the railroads and the public service corporations of their respective states, in short, not to capital as they did ten years ago, one realizes how revolutionary are the changes that are coming into our system. The democracy that was gathering strength in the days of Hanna is beginning to move in the nation.

Indeed, the growth of fundamental democracy in this country is astonishing. Thirty years ago the secret ballot was regarded as a passing craze by pro-

fessional politicians. Twenty years ago it was a vital issue in nearly every American state. To-day the secret ballot is universal in American politics. Ten years ago the direct primary was the subject of an academic discussion in the University of Michigan by a young man named La Follette of Wisconsin. Now it is in active operation in over two-thirds of our American states, and over half of the American people use the direct primary as a weapon of self-government. Five years ago the recall was a piece of freak legislation in Oregon. To-day more American citizens are living under laws giving them the power of recall than were living under the secret ballot when Garfield came to the White House, and many times more people have the power to recall certain public officers to-day than had the advantages of the direct primary form of party nominations when Theodore Roosevelt came to Washington. The referendum is only five years behind the primary. Prophecy with these facts before one becomes something more than a rash guess.

The democracy has the executive and the legislative branches of the state and federal government under its direct control; for in the nomination of a majority of the members of the House and of the Senate the personification of property is unimportant. By

making the party a legalized state institution, by paying for the party primaries with state taxes, by requiring candidates at primaries to file their expense accounts and a list of their contributors (as is done in some states), by limiting the amount to be spent (as is done in certain states), and by guaranteeing a secret vote and a fair count, the state has broken the power of money in politics. Capital is not eliminated from politics, but it is hampered and circumscribed, and is not the dominant force that it was ten years ago. Then the political machine was financed by capital invested in public service corporations and was continually trying to avoid the responsibility of its public partnership. Then the political machine quietly sold special privileges to public service corporations. Now the political machine is in a fair way to be reduced to mere political scrap iron by the rise of the people. To-day in states having the primary under the state control the corporation candidate for any public office is handicapped. The men elected to the United States Senate from states having the Northern type of primary generally have been free men, free from machine and corporation taint. Under the primary system any clean, quick-witted man in these states can defeat the corporation senatorial candidate at the primary if the people desire to defeat him.

This advance alone is worth the cost of the primary—something like \$100,000 for each state biennially. Moreover, the fact that governors and state officers, legislators and county officers, also are free men makes the primary invaluable in terms of money. Taft and Bryan, the two men who had less money behind them than any of their opponents, the two men whom the “interests” did not wish to see nominated, headed the tickets of the two great parties in 1908. And when those United States senators who win their nominations and elections without the aid of the railroads and the public service corporations, and win in the face of the opposition of these organizations of capital—when these senators begin to name federal judges, the supreme court will begin to reverse itself and the people will capture the lower federal courts—the last citadel of capital. But that is almost an “iridescent dream.”

However, just now the people are finding a way around the legislative veto of the state courts. And this they are doing more generally than may be realized by many people. The voters are taking two methods of circumventing the legislative veto of the courts: first, by amending their state constitutions, or making new constitutions; and, second, by direct legislation, or the modification of it known as the ini-



tiative and referendum. State courts are elective, and therefore are afraid of majorities. They cannot declare constitutional amendments unconstitutional, and they handle laws adopted by a direct vote of the people with great care. Hence the prevalence of the constitutional amendment in American states, and the growth of the initiative and referendum from Maine to California. The tendency to amend a state constitution is not a local phenomenon. In 1908 California voted on eighteen amendments, and Missouri voted on eight. If a state may be said to have a tendency to amend its constitution when it has voted upon one or more amendments at nearly every biennial election for half a dozen years, then the tendency is fairly marked in California, Alabama, Utah, Massachusetts, Oregon, Rhode Island, Texas, Minnesota, New Jersey, Montana, Florida, Maryland, and Mississippi, in New York, where the amendment is a slow and difficult process, in Vermont, where there is agitation for a constitutional convention, in Michigan, where a new constitution has just been adopted, in Illinois, in Maine, where the initiative and referendum has just been instituted by constitutional amendment, and in New Hampshire, Louisiana, Missouri, and Kansas. Where the habit of amending the state constitution becomes settled, as it is in

California and Missouri, the habit amounts to a public referendum of many laws, and from the standpoint of direct legislation and government by the majority this habit is praiseworthy. If, however, the guarantee of absolutely unrestricted capital is considered more important than the majority rule, the habit of amending the constitution is dangerous and revolutionary.

The value of the initiative and referendum depends also upon the point from which it is viewed. In certain quarters politics is considered the science of government of the many by the few. Also a government is considered excellent when it protects investment, when it makes the right of contract more important than the welfare of citizens, when it protects vested rights even after they become vested wrongs. In those quarters the initiative and referendum, which is coming into American government as surely as the secret ballot came, will be deemed a dangerous menace to our institutions. Certainly it is a departure from the idea of a government by the few which inspired the fathers of the federal Constitution when Chief Justice John Marshall gave the federal judiciary the final veto on all laws passed by state or national legislatures. And the issue should be met candidly. The friends of the movement for direct legislation should admit frankly that the purpose of their cause

is two-fold: first, to compel legislatures to act quickly and without evasion; and second, to circumvent the veto of such courts as are elective, and hence dependent upon popular majorities, and to put whatever righteousness there is in a definitely registered expression of popular will before such courts as are not elective to stay them in their vetoes. For the veto power of the American courts over legislation — under the assumed right to declare legislation “unconstitutional” — is one of the most ruthless checks upon democracy permitted by any civilized people. European kings and courts do not have such reactionary power; yet in the end it seems to make for righteousness. Because under that power in America people have developed a patience and a conscience and a patriotic self-abnegation which fits them to progress in the light of the vision within them. So the initiative and referendum — a most outlandish phrase — which is coming into state governments and city governments all over the country will be the instrument of a self-restrained people. It will not be the weapon of a mob.

The plan of the initiative and referendum briefly is best illustrated by extracts from the constitutional amendment of the state of Oregon.<sup>1</sup>

<sup>1</sup> The legislative authority of the state shall be vested in a legislative assembly, consisting of a senate and house of representatives,

Maine and Missouri have adopted the initiative and referendum as a part of their constitutions. South Dakota, Oregon, Oklahoma, Utah, Montana, have the initiative and referendum as a part of either their fundamental law or upon their statutes. Nevada has the referendum, and is about to vote on the proposition to establish the initiative and referendum. Illinois and Texas have the advisory initiative; in the case of Illinois it is enacted under a law called the public policy law, and in the case of Texas it is in the pri-

but the people reserve to themselves power to propose laws and amendments to the constitution and to enact or reject the same at the polls, independent of the legislative assembly, and also reserve power at their own option to approve or reject at the polls any act of the legislative assembly. The first power reserved by the people is the initiative, and not more than eight per cent of the legal voters shall be required to propose any measure by such petition, and every such petition shall include the full text of the measure so proposed. Initiative petitions shall be filed with the secretary of state not less than four months before the election at which they are to be voted upon (and a majority vote adopts the measure). The second power is the referendum, and it may be ordered (except as to laws necessary for the immediate preservation of the public peace, health, or safety) either by the petition signed by five per cent of the legal voters, or by the legislative assembly, as other bills are enacted. Referendum petitions shall be filed with the secretary of state not more than ninety days after the final adjournment of the session of the legislative assembly which passed the bill on which the referendum is demanded. The veto power of the governor shall not extend to measures referred to the people.

mary election law, which forbids party platforms to indorse proposed legislation that is not first voted upon at the primaries and indorsed by the people. Nebraska gives the right of initiative and referendum to her cities. Kansas grants the referendum on all franchises to cities. Arkansas has submitted a constitutional amendment enabling the establishment of the initiative and referendum by statute. The movement for constitutional state-wide laws providing for the initiative and referendum is now well under way in thirty states of the Union. The movement never has been defeated by the people of a state when it has been presented to them in a simple form for a direct vote. The legislatures of Wisconsin, of Minnesota, of Iowa, of Oregon, of Mississippi, of South Dakota, of Nebraska, of Delaware, of North Carolina, of California, of Oklahoma, of Washington, of Idaho, of Kansas, of Texas, of Illinois, of North Dakota, of Missouri, of Montana, of Colorado, of New York, of Massachusetts, of Tennessee, of Maine, and of Georgia have granted either the initiative and referendum or one of them to certain cities in these twenty-five states.

Thus we see that while the secret ballot in the nation is universal, and the primary prevails in two thirds of the American states, the movement for direct legis-

lation has gained foothold in twenty-five states, and is directly before the people, either as a constitutional amendment, a pledge of the dominant party, or as a pledge of the majority of the members elected to the legislature, or in the message of the governor, in five other states — making a total of thirty American commonwealths wherein there is an aggressive movement toward direct legislation. It is noteworthy that the movement has followed the direct primary movement and has doubled its strength biennially since 1901. And back of the movement for the initiative and referendum and the primary and the secret ballot, waiting silently for its summons to come to the active service of democracy, like Madame Defarge knitting in the wrongs of the people, stands the Recall.<sup>1</sup>

So the appearance of the recall, in the cities of a dozen states within a little over a year, should make those statesmen nervous who look forward to the time when the country will go back to the Good Old Days. For this tightening grip of the people upon their state governments, as evidenced in some form in every American state, has been an intelligent, gradual, well-directed growth of popular power. Its direction has been wise; for from the beginning to the present there has been no spasm of public indig-

<sup>1</sup> Appendix, p. 263.

nation followed by reaction. Whose wisdom directed it? No man's name is connected with it. No party or propaganda has been behind the movement. It operates in Democratic states and in Republican states with equal efficiency. And in no American state has the fight been abandoned, either for the secret ballot, the publicity of party financing, the primary, the initiative and referendum, or the recall, after it has become a serious issue of any group of men of any party. The movement is one of the largest vital things in our politics to-day, but politicians generally — even the best of them — do not seem to understand it. It is as unobtrusive as the wonderful miracle of growth. And in all the heavens, the sea, and the earth this movement has no other prototype except the miracle of growth that we pass by unnoticed every day of our lives. It is growth — spiritual growth in the hearts of the American people. It is a big moral movement in democracy.

For each one of these four reforms — the secret ballot, the publicity of party finance, the direct primary, and direct legislation — requires a broader scope for the individual's concern than he would have under the old order. The man who refuses to sell his vote when bribery is a "conventional crime" is considering some interest other than his own. The man who

votes for a direct primary foregoes a place in the aristocracy of the "organization" forever by abolishing that aristocracy. The man who demands publicity in campaign finance knows that he is cutting the revenue from under his own party, and that there will be less fun in the campaign. The man who urges direct legislation puts a vast power in the hands of his neighbors to control him. Only as men have faith in the force outside themselves that makes for righteousness will they surrender personal prerogatives to the public good as the people have been surrendering their individual advantage in this democratic movement. The people are controlling themselves. Altruism is gaining strength for some future struggle with the atomic force of egoism in society.

But who has led the people in this journey toward democracy? Who has directed this movement? Who has performed the miracle of democratic growth in the hearts of the people? Here it is — the great surrender which is bringing the great reward — an old equation in the arithmetic of Providence. But who has put the problem and worked it out? No man — no group of men even — has done it. Yet here it is — no more strange or mysterious than any other of the miracles of growth about us that our eyes see and our souls ignore.



The good will of the people — the widening faith of men in one another, in the combined wisdom of the numerical majority — indicates the presence of a human trust that only may come to a people with broadening humanity, widening human love for one's fellows. And if God is love, as the prophets say, then love is God, and this growing abnegation of self to democracy is a divinely planted instinct — one with the miracles of life about us. If this is true, if the growth of democracy in this country is as natural as the inexplicable wonders of growth in the woods and fields and cities of men, then democracy may be trusted. For its title is secure, and so we may understand certain signs of the times. For what do we see in this programme of American democracy?

It is as old-fashioned as the fog. Indeed what is the fight of our democracy against unfair competition, but the cause against him that "taketh reward against the innocent"? What is the contest of the people against overcapitalization but a struggle with him that "putteth his money out to usury"? What is the campaign of all decent Americans for simple business honesty, but scorn for "the reprobate"? What is this broadening intelligence of the Republic, which faced a panic and did not flinch from its conviction of righteousness, but

“him that sweareth to his own hurt and changeth not”? The tendency to democracy is a tendency to altruism, and altruism is love of kind, and God is love. The social, political, and economic forces released by steam — democracy and capital — are in the crucible of our national life. They are fusing. But there will be no explosion. For when democracy comes to the problems that have baffled other nations, if democracy holds true to faith, true to its instinct, we may expect democracy to be just.

But those who would use democracy for an end, who would make it serve them by flattering it, by making it mad with power, those who would teach democracy the doctrine of an eye for an eye, and a tooth for a tooth, even against those who have oppressed the people, they are democracy's foes. For —

“Except the Lord shall build the house, they labor in vain that build it ; except the Lord keep the city, the watchman waketh but in vain.”

## CHAPTER IV

### CERTAIN DEFINITE TENDENCIES

THERE is danger always when man makes a thing — whether it be a king, a constitution, a city, a democracy, or what not in the way of a human institution — of his mistaking the thing for an end, when it should be merely a means of human usefulness. The real danger from democracy is that we will get drunk on it. Government of the many by the many is not necessarily more desirable than the government of all by one. The tyranny of the mob was known by the French to be as cruel as the tyranny of a king. And there is grave danger that the rise of democracy may not be accompanied by wisdom and self-restraint. There must be a check on the power of the masses; and the veto of the courts on legislation is not only beneficent, but absolutely necessary, if the masses are not checked in their use of power by their own broad charity, their own wide intelligence, and their unselfish courage to do the right even against their immediate material interests. The success or failure of democracy depends entirely upon that working

common sense of impersonal justice in the average man, — that common sense of kindness best termed righteousness. And as the essence of what preachers call sin is mere selfishness, it follows if we are to use our reformed ballots, our cleansed party system, our direct primary nominations, or our direct legislation to any good end in this world, that we must depend upon the breadth of view of the average man for our good end and also upon the amount of righteous, unselfish common sense that men put into our ballot boxes.

It will be interesting, therefore, in considering this new democracy now growing into power at the beginning of this century, to observe what things attract its attention. For as a man thinketh in his heart so is he. And it is fair to take a man off his guard to get at his real convictions. If ever democracy is off its guard, it is during a presidential campaign. So that the platforms, pronouncements, and propaganda of the campaign, represent what America really believes and secretly hopes for.

Now, the campaign of 1908 was a radical campaign. The differences between the parties were not differences of creed, but differences of degree in the acceptance of a common creed. Both parties, for instance, declared in favor of an immediate revision of the

tariff; both parties declared in favor of controlling combinations of capital called the trusts; both parties declared strongly for public control of the transportation systems of the country; both parties pledged themselves to guarantee certain depositors in banks against loss — the Democrats promising a bank guarantee law for all banks, the Republicans promising to establish postal savings banks; both party platforms strongly advocated the restriction of capitalization in public utilities corporations; and both party leaders expressed in their official letters of acceptance a belief in the income tax, the inheritance tax, and the enactment of a law which would consider the physical valuation of railroads as a part of the cost of service upon which estimated rates should be made by commissions. Now, all those fish will go on one string: the restriction of capital. Lower tariffs restrict capital by removing the public bonus which enables capital to meet foreign competition; the transportation question stated in the terms of the Roosevelt policies — over which the only dispute between the two parties was one of priority of discovery — restricts capital by requiring improved service and controlled rates; the bank guarantee law, whether by postal savings banks or by the depositors' guarantee, restricts banking capital in a large area of its operations; the control of

trusts and monopolies — whether on a basis of the size of the trust or its iniquities — restricts capital in its tendency to form large aggregates, selfish, unrestrained, which by their very size feel that they must move in a domain of their own beyond the plane of common morality. The income and inheritance taxes restrict capital by the oldest form of restriction in the world, simple subtraction.

Mr. Bryan differed entirely with Mr. Taft as to the methods to be used in restricting the operations of capital, but Mr. Taft was as emphatic as Mr. Bryan in declaring that the restrictions should be made. And it was because the people believed that on the whole they could trust the efficiency of Mr. Taft that they chose him in preference to Mr. Bryan. The victory of Mr. Taft indicated a deep-seated conviction in the minds of the people that their widening moral sense should change the fundamental legal view of the nation upon the subject of capital.

The popular belief in the public interest and control of what hitherto has been considered private property is expressed best by an opinion of the United States Supreme Court. The court holds that "when the owner of a property devotes it to a use in which the public has an interest, he in effect grants to the public an interest in such use; and must to the extent of that

interest submit to be controlled by the public for the common good, so long as he maintains the use.”<sup>1</sup>

So here we have the problem of democracy restated: to fetter greed by the common good. It is the commonplace conflict between egoism and altruism, between the centripetal and centrifugal forces of nature, of life, of society. To define the limited rights of private property within the metes and bounds of the common good, to express in terms not only of statute, but of law and custom, the creed of a people moved in some small measure away from the selfishness of other generations — that is the mission of our twentieth century democracy. When that task is done, we shall have conquered, spiritualized, and socialized steam. And to set out on that mission we have seen in the foregoing chapter how the people have been fighting themselves free, fighting to get capital out of politics, by taking money out of the ballot box, the convention, and the legislature.

A government dominated by the aristocracy of politicians would naturally be a government for the friends of the politicians. The politicians were financed by owners of capital or “property affected by its public use,” and naturally this government, in the last quarter of the nineteenth century, expressed the

<sup>1</sup> *Munn vs. Illinois.*

protest against recognizing the rights of the partnership in property formed by the public use of the property and limited by the common good. It was a gorgeously simple machine. Capital largely in the form of "property in a public use" furnished money which gave the politicians power. They returned political power to capital, which made it more important in the government than the people. So for twenty years we find democracy struggling with subconscious prescience to throw off her shackles. First came the fight for the secret ballot, which freed democracy from crass bribery; then came the fight for party reform — a fight to make majorities and not capital count in election returns. The fight began in a demand that campaign contributions be publicly accounted for. Then the people prohibited corporation contributions, thereby taking refined bribery from politics. This drove money from the ballot box and made men in majorities masters of elections. Simultaneous with this movement came another for party nominations directly from the people; for it was still necessary to smash to utter débris the party machine financed by the holders of special privileges; *i.e.* those owning property affected by its public use, who vehemently protested against a public accounting of the profits of the public partnership and re-



garded a legal distribution of the common profits in lower rates and better service as public plunder. And now following the direct primary, which made the people and not the aristocracy of politics the direct masters of the public servants, is coming direct legislation from the people.

With the breaking of these shackles upon democracy — direct bribery, party bribery, machine rule, and unresponsive legislative control of the states — democracy is now setting out on her real mission: to define the rights of the owner and the user of private property according to the dictates of an enlightened public conscience. Now the shackle smashing has been done and is being done by the states. But the broader work done by the people after acquiring freedom in their states has been done, not only in states, but in cities and in the federal government. The work done in the states probably is most fundamental; it affects more people than the work either in the cities or in the federal government. Property as it comes under state control is largely capital invested in stocks and bonds. And the activities of this capital are practically all affected by its public use. So, speaking broadly, all capital invested in any state is rapidly coming under that state's supervision, protection, and control.

The methods of state control of capital so far as they have been evolved by the uses of necessity, generally are three: first, restriction, as in the case of capital invested in industries, public utilities, and banks; second, division, by means of taxation, as in the case of franchises, licenses, real estate, legacies and (in rare cases) incomes above a certain sum from any source; and third, prohibition, as in the case of capital invested in the sale and manufacture of liquor as a beverage, capital invested in the manufacture of impure food, and capital invested in race track gambling or in any business wherein the common good demands that the business stop. That the movement is not socialistic is shown by the fact that state ownership is rarely, if indeed ever, resorted to in the control of capital. Municipal ownership of commodities and of utilities is common. Federal ownership, as in the case of post offices, is accepted, and it is promised in the case of postal savings banks, and is to be tried in the case of coal and oil and mineral lands reserved from segregation and private ownership; but state ownership is exceptional. The present movement of democracy is toward regulation and control — not toward ownership. This movement is distinctly not socialistic, in America at least. Democracy is trying to give the individual the widest latitude commensu-

rate with the common good. And control is only imposed upon capital when its predatory activities affront the awakening conscience of the people. The whole movement is moral rather than economic. And rigorous as are the iron laws of trade, the moral law will bend them. For as economic laws bend mere statutes, so do spiritual laws change economic reckonings.

So far as statutes are concerned, the states of the American Union seem to be unanimous in agreeing that those combinations of capital "in restraint of trade" called trusts shall be controlled, and the states are almost unanimous in the belief as expressed in statutes that the railroads shall be controlled. And while there are more laws concerning trusts, there is more effective enforcement of the laws controlling railroads. For excepting West Virginia, Delaware, Wyoming, Idaho, and Maryland, every American state now has a railroad commission. Typically these railroad commissions are made up of three men, appointed by the governor — though a few states, notably Kansas and Missouri, elect them. The powers of the commission typically are to hear complaints of shippers and others, and to "fix and adjust rates" thereafter, and to demand (with varying grades of authority back of its demand) changes in service. Typically the powers of the state railroad commission

to enforce its demands, are shading from suggestion and advice to considerable legal authority to insist backed up by penalties to be imposed upon disobedient railroads. But the real powers of the typical state commission generally are not tested under the state courts, but in the federal courts, where these powers are frequently curtailed.

Yet in spite of the fact that the railroads, as well as other corporations generally, take serious litigation to the federal courts, the state commissions are doing a real service to the people; secondary service, of course, as compared with the important necessary work of the Interstate Commerce Commission, but still real service. It may be well to consider these state commissions in some detail. Of recent years there has been a growth in two directions as regards laws controlling railroads by the state. One tendency is to give state commissioners the right to adjust rates upon their own motion — without waiting for formal complaints from shippers. This power is given to the commissions of Mississippi, Virginia (where the commission is called the “corporation commission”), Indiana, Nebraska, Kentucky, Wisconsin, Arkansas, Illinois, Minnesota, Ohio, Missouri, Michigan, North Carolina, South Carolina, Alabama, Oregon, Washington, Kansas, Oklahoma, Texas, Georgia,

New York, Florida, Montana, and Iowa. This right to take up cases without waiting for shippers to complain formally enables the commissioners to equalize rates in making changes, so that by creating a new rate for one community or commodity they do not treat another community or shipper unfairly. It is an important power, and one which railroads through their lobbyists in legislatures always resist.

The second marked tendency in state railroad legislation is to give state railroad commissioners the power to ascertain the actual physical valuation of railroads, and from that actual physical valuation in some measure to determine the cost of service, and to establish reasonable rates based upon the cost of service as well as upon its value. Practically all the state railroad commissions provide that a report of the annual business of each railroad in a state be filed with a commission, and nearly all the states prescribe the detailed form in which the report shall be made. Texas requires the railroads in that state to keep books in a certain way, and these books must be open to the railroad commission at all times. Thus with the physical valuation and the gross business of a given company before it, with its labor account, its interest account, its betterment account, and its various fixed charges segregated, a state commission

can get about as closely to what is indeed and in fact a reasonable rate, within a state, as the rate-making expert, who too frequently bases rates upon the value rather than upon the cost of service.

The states which have empowered their railroad commissions to ascertain the physical value of railroads are Mississippi, Virginia (through a corporations commission, which also looks after assessments), Nebraska, Kentucky, Wisconsin (through its tax commission), Arkansas, Minnesota, Michigan (through its tax-gathering machinery), North Carolina, Alabama, Oregon, Washington, Texas, Montana, Kansas, Oklahoma, and Florida. And the states which have made an adequate appropriation for the work of valuation are Virginia, Kentucky, Wisconsin, Minnesota, Missouri, Michigan (which is a model of its kind), North Carolina, Alabama, Oklahoma, Florida, Montana, and Texas. In many of these states the tax commissioners appraise the railroads. And the railroad commissioners use the appraisement, and it forms a basis for getting at the truth about many rate controversies.

Probably as a result of this information in the hands of the commissions, and because of the knowledge that it may be accurately obtained, the movement for the two-cent fare has not been checked by

the railroads. For now the two-cent fare prevails in Kansas, Nebraska, Michigan, Illinois, Indiana, Minnesota, Ohio, Georgia, Connecticut, West Virginia; and reduced fares prevail in Alabama, North Carolina, Missouri, North Dakota, Michigan, Pennsylvania, Iowa, and Wisconsin. In some of the states, notably New York, the reduction has been voluntary; but it has been voluntary because in adjacent states the fares had been reduced by law. The people have been reasonable in this demand for the two-cent fare. They have rarely asked for it except in prairie states, where railroad grades are easy, and maintenance is not excessively high; or if they have asked it in mountainous regions, the regions have been thickly settled and local traffic has been profitable. The two-cent fare legislation has not been either selfish or visionary. And while the railroads are resisting it in the courts, they are resisting the principle of state rate regulation, rather than the amount of the rate. Generally speaking, the lower fares remain while the litigation goes on; though in Arkansas, where the reduction was of doubtful equity, owing to the light travel and the high cost of maintenance, the railroads have reëstablished their three-cent fares.

Contemporary with the two-cent fare movement came the anti-pass movement, and the two move-

ments were coördinated in this: that the abolition of the pass enabled the railroads to collect additional fares and thus to recover in a small measure their loss, occasioned by the reduced rate. But the anti-pass movement was based, not on economics, but upon politics. The movement was really connected with the growth of fundamental democracy. For the pass of the politician gave him power. He could run on errands against free government, and he became by reason of his pass the political agent, not merely of the railroad, but of all the foes of progress in the community. Railroad passes packed conventions, corrupted legislatures, colored the view of administrative officers, and biased courts. The pass was one of the most formidable weapons of the aristocracy of politics against the democracy. But by the quickening conscience of the nation the pass has been either restricted or entirely abolished in twenty-five states, save when it is issued to actual employees of railroads. The total abolition of the pass, however, has been accomplished generally in those states which have the direct primary law. In the other states it is merely restricted. And the measure of control the people have in a given state may be taken by looking at its primary and anti-pass laws. For the abolition of the pass and the convention puts the public service cor-



poration politician out of business, and permits the people to conduct their own affairs.

These four broad expressions of the popular movement to control railroads come from so many states that they may be called typical of the minor activities of democracy. Indeed all but the two-cent fare movement are national in their scope, for one of the national parties and both of the candidates for President in 1908 of the two great parties indorsed federal legislation which will give the Interstate Commerce Commission power to adjust rates upon its own motion, and which will also give the Interstate Commerce Commission an appropriation adequate to make an appraisalment of American railroads and use the appraisalment as part of the data necessary for establishing equitable rates. Moreover, President Taft's special message of January 7, 1910, contained the most radical recommendations for the control of capital in interstate commerce ever made in a presidential message in America. These recommendations were accepted as matters of course by the people. Ten years ago such radicalism from a President would have paralyzed the stock market. So all those attempts of democracy to control capital engaged in interstate commerce by restricting it to reasonable rates, and to prohibit it from political ac-

tivity, may be called national movements expressed both in the state and federal government.

But in addition to these national movements there are local movements of importance. For instance, the New England states, wherein hauls are short and rates small if not low, are not so concerned about rates as they are about service. And in the smaller states the commissions in New England are not empowered to adjust rates, but instead to recommend to the legislature for enactment such rates as the commission thinks reasonable. Much space is given in the New England statutes to the regulation of grade crossings; much space is given to the relations between the railroads and their employees; much attention is paid to the matter of stations, switches, and terminals. Massachusetts, which is the model for New England, contains a most radical as well as socialistic provision for state ownership in the railroad law.<sup>1</sup>

When we consider that this statute is reënforced by a statute — common to the Eastern states and a number of Western states, and one which is urged upon Congress by President Taft — which limits the stock or bond issues of railroads to such as meet the approval of the commissioners, and when we further consider that the method of sale and all the receipts of the sale

<sup>1</sup> See Appendix, p. 254.

of stocks and bonds are controlled by the commission, we see the extent to which the people are going in their restrictions of capital. Also — and this is important — it should be remembered that this Massachusetts law above quoted is not a wildcat statute of a sagebrush state, passed in a corporation-baiting craze; it is a statute upon the books of the most conservative American state, and most of the drastic provisions of other Massachusetts statutes are duplicated, where they are not excelled in severity, by the statutes of the state of New York. But Massachusetts can and does legislate upon the badges, caps, and uniforms of railroad employees, their hours of service every week, their employers' liability, the assumption of risks they take, the condition of their eyes, and the character of their mutual insurance.

Legislation for the benefit of employees is growing in popularity. The fellow-servant is not a superior servant in a score of American states now; the hours of service of railroad employees are considered by law in many of the Southern states, in the Dakotas, North Carolina, Minnesota, New York, Wisconsin, Massachusetts, Montana, and Missouri; while the trend of federal legislation and of recent federal judicial decisions is to protect employees, thus enlarging the

wage fund. There seems to be a feeling, as strong and sure in New York and New England as in the South and the West and in the far Northwest, — a feeling broad enough to be called a national feeling, — that too large a share of the gross earnings of American railroads goes into interest charges and dividends. Much of these interest charges and dividends are paid upon what looks like “fictitious capitalization” in the light of such information as the people have been able to secure. That phrase “fictitious capitalization” was coined by the Supreme Court of the United States, and, therefore, is not so dangerous as it sounds. And so we find in the statutes of Wisconsin, Texas, Oklahoma, Massachusetts, Kansas, New York, Virginia, Georgia, and Nebraska provision made for regulating or restricting the stock and bond issues of railroads; and President Taft is demanding regulation and restriction of stocks and bond issues not only for railroads, but for all concerns incorporated under federal charter laws.

Among the other activities of the people in the several states looking toward the restriction of capital invested in railroads is one found specifically in the statutes of Massachusetts, Michigan, Kentucky, Florida, Ohio, Minnesota, Nevada, Mississippi, Washington, Indiana, Missouri, Virginia, Louisiana,

Oklahoma, South Dakota, South Carolina, Pennsylvania, New York, Texas, Montana, Georgia, Nebraska, Illinois and Iowa, which prohibits railroads from charging more for a short haul than for a long haul. In all these statutes there are reasonable exceptions to the rule and certain reservations as to its literal enforcement; but the fact that the statutes of other states, by implication if not specifically, make provision for the same rule indicates rather a widespread belief in conservative states that there is some justice in a rate per ton per hundred miles — subject, of course, to differences in classification. Michigan in enacting her maximum freight law has all but stated the principle, as also have two of the states in the far South. And when the railroads and the people settle their controversy in the federal courts, if it is settled in favor of the people, — as it must be settled inevitably in a democracy, — then it is not unlikely that democracy may solve the railroad problem equitably upon some such basis as the rate per ton per mile. Indeed the Interstate Commerce Commission's reports lean strongly to some such adjustment of rate difficulties. For it is admitted that complaints of discrimination between individual shippers now are being remedied; and with the complaint as to relative rates for the same commodity between different points

settled, the only open question will be the one of classification.

Now, when we turn to the other wide field of democratic activity in which capital is being restricted by the several states, — the field occupied by the control and regulation of combinations in restraint of trade, — we find that the people of the several states acting independently have come to a common agreement. The anti-trust laws of the states are as nearly alike as the railroad laws, and these state anti-trust laws in many cases preceded the national law and inspired it, just as the railroad commission idea was a state idea before it became national. But for nearly a decade after its enactment the anti-trust law remained to all practical ends a dormant idea both nationally and in the states, and the federal railroad laws remained almost dormant after enactment; but the anti-trust laws and the railroad laws woke up and became active together. Then it was found that all the state and federal railroad laws and anti-trust laws required amendment, and that aroused combat from the owners of private property in public use. So that everywhere in the United States at about the same time the struggle to restrict capital in public use, whether that use was in railroads or in industries, became one struggle in two parts; and the story of

the struggle to define the boundaries of public use of capital engaged in operating railroads is the more interesting story.

As we have already observed there are, however, two other methods of controlling the profits of capital in public use — one by division through taxation, and the other through prohibition. And the endeavor of the people to make capital in the public use pay its full share for public protection and for the benefits of civilization makes an interesting record of achievement by the people through their states.

Thirty years ago we were a nation of tax dodgers. To-day the iniquities of taxation are shameful in American states, but not so shameful as they were in the old days. During the past ten years the tax laws of over half the American states have been changed, in the hope that they would be improved. The full rendition law has come into a large number of the states. And with it state tax commissions have been established in a wide group of the more progressive American states. These states are Pennsylvania, New York, Indiana, Kansas, Wisconsin, Michigan, Virginia, through her corporation commission; Maryland and West Virginia through a board of public works; Alabama, Washington, Oklahoma, New Mexico, North and South Carolina, and Nebraska through a state

board of equalization. New Jersey has a fairly effective system of county boards working together, and tax commissions have been appointed by the legislature or by the governor to codify and revise and improve the tax laws in Maine, Missouri, Vermont, Ohio, and New Hampshire. In nearly every state during the past five years there has been a serious attempt in the legislature redeeming the pledge of a dominant party to do something to improve the tax system. The people have grown intolerant of its injustices. They are willing wherever a full rendition law is enacted to give in their property at its full value; and where the taxes increase, there is not as much complaint as there would have been twenty years ago. The people earnestly desire to reform themselves. And they are working naturally to whatever end they may attain. For the state tax commission is an evolutionary product. Typically it merely binds the local state tax system into a state unit. For half a century the growth of railroads, telegraph, telephone, express, and sleeping-car companies has made it more and more imperative to have something more than the county or township unit to govern taxation, for properties extending over a score of units were subject to a score of different valuations. Corruption followed naturally in the days when bribery began at the



ballot box, and extended to public servants. So in most of the states there grew up a loose-jointed state system; generally it was called the state board of railway assessors, and in many states there was also a state board of equalization. But the members of these boards generally were state officers who had other duties and little responsibility for the work of assessment, and it was badly done; favoritism to the public service corporations was inevitable. For the corporations contributed heavily to the campaign funds of the parties, and the party management saw to it that, for every dollar given to the party, the corporations got hundreds of dollars in reduced taxes.

But this system is disappearing before the stronger system as exemplified in the tax commission. For the tax commission is absolutely responsible for its work; and it is sometimes elective. It has authority to put the valuation of land, of all kinds of personal property, and of railroad property upon exactly the same basis all over the state. Under the tax commission the county assessors are organized and directed. And the county assessors have direct charge and authority over the township assessors, who in turn have charge of their deputies. Thus the system has an authoritative head. And although only a third of the states have adopted this system, practi-

cally all of them are working toward it. For the movement is new, but it is growing rapidly. Variations of the system are found in the different states. In South Carolina, for instance, the insurance department has been taken from the state comptroller, and he has been made in effect a tax commissioner. In West Virginia the board of public works is the tax commission. In Virginia and a few other Southern states the evolution of the tax commission has progressed with the railroad commission, and the body that makes rates for certain public service corporations knows exactly what they are worth. This system is found in a modified form in Oklahoma. In Nebraska real tax reform has been accomplished by the state board of equalization, and the next step will be the commission.

While the people are working out their tax system, they have decided in nearly two thirds of the states that wealth does not pay its adequate share of the taxes under the present system. So the states have begun to tax inheritances. Some of these inheritance tax laws are a generation old, but most of them are new laws. The inheritance tax now is established in Massachusetts, Pennsylvania, Ohio, Missouri, Michigan, Virginia, Maryland, North Carolina, Tennessee, Colorado, Iowa, Idaho, Illinois, Connecticut, Wyo-

ming, Kentucky, Nebraska, Wisconsin, Minnesota, Arkansas, West Virginia, Oregon, Washington, Oklahoma, Utah, North Dakota, Montana, Texas, New Hampshire, New Jersey, Louisiana, Vermont, New York, California, Maine, Kansas, Delaware, South Dakota. Generally these inheritance tax laws are graduated, and do not seriously affect small legacies to direct heirs. But they will fall heavily upon large fortunes going to indirect heirs. These inheritance tax laws represent the instinctive feeling of democracy that all men have a right at the outset of life to an equal opportunity with all other men to develop their essential inequalities. The inheritance tax laws are intended to break any crust of caste that may form in America.

The franchise tax is also coming into the American system of direct taxation. It is generally a tax on the gross receipts of public utilities corporations, and as the states have provided for a system of bookkeeping for these corporations, the tax is easily assessable and collected. Twenty-five states have a franchise tax. And in addition to this North Carolina, Wisconsin, Virginia, and Oklahoma are taxing personal incomes above a certain sum.

Now, we shall see in a chapter devoted to the struggle of democracy with capital in the courts,

how these activities of democracy to restrict capital by state control and to divide capital by taxation, all are going through our courts; gradually statutes are changing into law. But this change is fought inch by inch on the part of capital. And the chief bulwark of defense behind which property rights are hiding is the Fourteenth Amendment to the Constitution of the United States. That was the amendment which guaranteed the negro his freedom. But it contains a clause which provides that no state shall deprive a person of his property "without due process of law." And the puzzle in the courts is to find out when an act of the legislature restricting the activities of capital or taxing capital is really "due process of law." It is a fine game of political hide and seek; but democracy has caught and is catching so many of the hidiers, that within a decade at the most the game will be played out.

The third method which states are using in the control of capital is prohibition. In spite of the Fourteenth Amendment to the Constitution of the United States, persons and corporations having millions of dollars invested in many of the states are being deprived of their property "without due process of law." The closing of the race tracks in Missouri and New York, which has been followed by

a slump in race-track gambling all over the country, has deprived thousands of people of property which they considered just as sacred as the railroad holders of coal mines in Pennsylvania considered their property, and probably with about as much equity. And when one estimates the amount of property destroyed by the growing sentiment against gambling in every American state during the ten years now passing, it is hard to realize that the Fourteenth Amendment should stand idly by and see all this wrong done, while it is so active in behalf of the public service corporations! But the greatest destruction of property in the country without due process of law has been done to the brewery and saloon business.

The anti-saloon sentiment of the nation seems to have gone to work about ten years ago, and worked without much result for half a decade. But since 1904 results have been coming regularly. State-wide prohibition now prevails in Kansas, Alabama, Tennessee, Georgia, Mississippi, North Carolina, Maine, North Dakota, Oklahoma. Kansas adopted prohibition in 1880, but did not enforce it rigidly in the larger cities until 1907, and Maine has galvanized her old law into new efficiency. Prohibition now has abolished the saloon in a majority of the counties in Arkansas, Missouri, Texas, Connecticut, Delaware,

Florida, Illinois, Indiana, Iowa, Kentucky, Louisiana, Nebraska, New Hampshire, Ohio, Oregon, South Carolina, Tennessee, Virginia, and West Virginia. And in every one of these states excepting New Hampshire and Iowa, where prohibitory laws were repealed in 1903, there is a strong movement for state-wide prohibition, indorsed more or less definitely by one of the two ruling parties. In the election of 1908 the Anti-saloon League made gains in New York, Illinois, South Carolina, Washington, Idaho, and Ohio. The movement is strong in southern California, and is moving rapidly up the coast. In Colorado the saloon has been abolished from ninety-three towns within the past two years. In Massachusetts in five years there has been a gain of one hundred and ten towns for the anti-saloon territory. In Michigan there are now eleven prohibition counties and seven hundred prohibition towns, as against two counties and four hundred towns five years ago. In Minnesota five years have seen the prohibition towns grow from four hundred to one thousand six hundred and eleven. In New Jersey, where there has been a warm contest for four years, the temperance people have secured Sunday closing. And a state-wide campaign for county prohibition is waging in Pennsylvania.

The movement against the saloon is gaining head-

way in every American state. And sentiment now differs from sentiment thirty years ago; there is little emotionalism in this movement. It is subject to few reactions. The people seem to feel that the saloon is a lawbreaker, that it is a business' extravagance, and that it corrupts politics, and keeps the people from accomplishing other ends of good government. Hence capital invested in the liquor business is not restricted, as capital invested in public service corporations, not divided, as all capital is divided through the tax laws of the state, but destroyed without due process of law, and without recourse or damages from the state. And as the railroad laws of the states have been epitomized in the national laws, and as the growing conviction of the states that property should be further taxed has found a national voice in the declarations of President Roosevelt and Mr. Taft and Mr. Bryan for income taxes and inheritance taxes on the federal statutes, so the revolt against the saloon has found its echo in the demand for a national law restricting the interstate shipment of liquor into states wherein the sale of liquor as a beverage is prohibited.

Now, as has been said, all of these activities of democracy through the several states are met with opposition from the federal courts. If, on the one hand, the

unanimity of the people in the states indicates that they are acting under a common impulse, drawing them to a common goal, on the other hand, the remarkable similarity of opinion against these democratic reforms from certain federal courts, widely separated geographically and found here and there all over the nation, proves that the aristocracy of capital is as strongly united by instinct as is the democracy. But curiously those courts that are reactionary in their tendencies are blind. Those who serve capital also are blind. They do not see that this gradual restriction of property rights follows the gradual restriction of the rights of capital in elections, in conventions, and in legislatures. In the preceding chapter we saw the growth of democracy. In this chapter we see the restrictions of capital. As the rights of men enlarge, the rights of property in so far as they are antagonistic to human rights are clipped. It would seem that the conflicting rights may produce a serious clash. It is evident that whatever clash there may be must first come in the courts. And as matters now stand the courts may seem organized to protect property. To one who has little faith in American institutions, the situation may seem critical. But those who have faith in our institutions see no real cause for alarm. They do



not believe that the liberties of the people will suffer. Property in public use "must to the extent of that interest submit to be controlled by the public for the common good," and taxed "for the common good" and prohibited "for the common good."

"In the threatened clash between democracy and the courts, there is but one outcome. Of course, for the moment, the courts stand as the national champions of individual and property rights. But it should never be forgotten that in truly democratic countries, the judges are chosen by the people directly, or through the medium of selected executives; so that this condition is not necessarily an enduring one. The popular will, when persistently bent upon a definite goal, is bound to prevail in the end. In the best interests of conservatism, therefore, the safest course for the judiciary will be not flatly to dam the course of public opinion when once clearly defined, lest a flood sweeping all before it result. That happened in the case of our Civil War. The true function of the courts should be to hold back the impending waters until the issue is clear, and thenceforth to so shape or divert the current of affairs that both the individual and the public welfare may interact upon one another, to the good of both."

Now, these words, however radical they may seem, are not from a rabble rouser. They are from Mr. William Z. Ripley,<sup>1</sup> professor of economics at Harvard University. And the exhortation of these words to

<sup>1</sup> "American Railway Problems," by William Z. Ripley, Ginn & Co., Introduction, p. xxiv.

patience, under which the nation may grow in grace as it submits for a time to palpable injustice, is not the best authority we have for hope that in the end democracy will triumph. For is it not written, "Blessed be the meek, for they shall inherit the earth"?

## CHAPTER V

### PROGRESS IN AMERICAN CITIES

DURING the early years of this century two men living in a great city of the Southwest epitomized so exactly much of the good and most of the bad in our municipal life that the story of these men should be set down here. For the story in many ways is the parable of politics in the great cities of the land. One man was rich. He had family. His father was a personage in the state and in the nation forty years ago. The other man came up from the people. He was no one in particular. The rich man kept out of politics; he was in business. He was a pillar of society. The poor man went into politics, perhaps with the idea that some day he might become a pillar of society. He went to the common council in his city for the glory of it. To go he made a journey to the city boss and asked for the right to be a councilman. A city boss always helps men who are in politics for the honor it brings. And after the poor man had been in the council for a time, he found — did this common coun-

cilman — that to get results, to get favors for his ward, he would have to tie up with the “combine.” And the boss cinched up the girth of his control on that common councilman two holes when the common councilman joined the gang. Then when the boss fixed it so that a little money might be distributed among the faithful, the common councilman accepted the common practice and took his share. And the other man, the pillar of society, the rich man, knew what had been done by the boss. For part of the money the boss was distributing came from funds which the rich man was guarding. He knew how franchises were bought, for his clients and friends were in the market. But it came to pass, when things reached their worst, that the pillar of society grew disgusted with the miserable business. And when the member of the common council heard a great orator tell of deeds upon the battlefield of Gettysburg, the councilman rose while the band played the Star-Spangled Banner, and said, as his eyes filled and his voice choked: “Oh, if I could only die for my country!” And then the crash came. Arrests for bribing and accepting bribes were made. Whereupon the prosecuting attorney began to get anonymous letters, faultlessly typed, telling him what witnesses to summon, what questions to ask them, and in general how

to get at the truth. Every day came these letters, and the thieves in the city, big and little, were in consternation at the acumen of the district attorney. The district attorney never fathomed the mystery of his anonymous friend's identity. But he found that the information invariably was accurate. So the district attorney followed the blind lead and got results. He knew that some one was aspiring beyond his courage, that some one saw the sin of bribery, that some man, apparently an educated man, obviously a man high in financial and social circles, was holding out a life line to the people. And then one day the man who had wept for a chance to die for his country fled from his country to a foreign land, in fear of a prison; and the pillar of society died by his own hand, a thief who had stolen the funds of widows and orphans. The day the rich man died the anonymous letters stopped. That was America in the three decades that followed the Civil War: aspiration, ignorance, and greed; aspiration which never saw that heroism means personal sacrifice; ignorance of the great truth that the sin of one brings suffering to all, and greed — common raw greed for wealth and power and position. And there we were in the seventies, eighties and nineties in our great cities, cheering the flag, robbing our neighbors, and selling our votes to

mammon in the ballot box, in the common council, and in the directorates of public service corporations. And whatever progress our American cities have made has been made in giving our aspirations a practical turn, through the conquest of the common ignorance and the common greed of the multitude. For the rich were as ignorant of duty to the city as the poor, and the poor were as greedy in their relation to the common city government as the rich. The pillar of society, a rich man, aspired to help the people reform their city; but he was not willing to reform himself. The member of the common council, a poor man, was willing to help the people upon the battlefield, but was unwilling to restrain his own greed; each was dumb when his conscience called upon him to repent of his own shortcomings. Greed killed them both, and so "the dead steered by the dumb went upward with the flood." And a third of a century passed while we sighed at the iniquity of our municipal governments and went on plundering one another.

Things began to grow better when in each city a group of men appeared, sufficiently large and sufficiently wise, willing to put into the various campaigns something that was evidently not self-seeking; following their example the mass of the voters put something besides self-seeking into the ballot box. In just

such a per cent as the people put in self-sacrifice have they taken out good government. For the ignorance and greed which corrupt our cities are complex and diversified. There is the ignorance of illiteracy — the smallest of the evils; there is the ignorance of misunderstanding of the weight and import of issues and the ignorance of the major faults and virtues of men — a secondary evil, easily eradicated; and there is the big primal evil of ignorance as it exists in party bias, classconsciousness, and caste feeling. And as for the common greed, it is expressed in the greed of the voter for personal profit or personal power, whether that power or profit be manifest in the nod of the precinct policeman or the franchise for a lighting plant; the common greed is expressed in the greed of the politician, whether it is for jobs for his supporters, or bribes for his vote; and the common greed is expressed by the capitalist, whether in his desire to build a coal cellar under his sidewalk or to steal a subway. That is the problem of municipal government in America, whether in New York, San Francisco, New Orleans, Cleveland, Chicago, Galveston, or Portland, whether in the large cities or in the country towns — it is one problem, the task of clearing away ignorance and fettering greed.

And what has been done with the problem? To

begin with, of course, there are the public schools. "We spend more money," writes the city clerk of Cleveland, "in educating our children than we spend in all the other departments of the city government combined." And the case of Cleveland, which spends more than half of its municipal income in paying for schools, is duplicated in the cities, big and little, all over America. Schools and playgrounds and parks and libraries, which are found in more or less profusion now wherever ten thousand American people are congregated, must do their work of educating the masses in primary knowledge of the fundamental facts of municipal government before the higher classes in æsthetics may be profitably organized in civic beauty. It is self-evident that if America is to clear away ignorance in the cities, first the people must be taught to read and be given times and places for reflection upon what they read, and they must have reliable facts.

And reliable facts as to the cost of city government in America are just what the people have not had. Municipal bookkeeping has been miserably done. The blunders and the crimes of politicians have been hidden in ledgers and daybooks. Only an expert could get at the truth about the cost of administration in any one American city, and the truth about the



comparative cost of municipal administration has been as little understood as the canals on Mars. But within the five years last past, a widespread feeling has manifested itself in the country that uniformity of municipal accounts was needed. New York, Boston, Baltimore, and Chicago have adopted in part the schedules prepared by the National Municipal League for the keeping of municipal accounts, and the states of Ohio, Massachusetts, Iowa, and Wyoming have passed laws requiring the cities in these states to adopt a uniform system of municipal accounts. The adoption of uniform accounting may not seem heroic. It is not a cause upon which to appeal to the passions of the populace; and yet here is what happened: In July, 1908, the commissioners of accounts handed to the mayor of New York the report of their findings. Before frost one borough president had fled under fire, one had been removed by the governor, a third had resigned, a fourth had been accused of malfeasance in office more serious than is charged against the other four, and one of the five remained. And the office of borough president is one of as great dignity and power as is the office of governor in a considerable minority of our American states. A research of municipal accounts similar to that in New York was made in Boston and the revelations shocked the

city. The accountant of the Good Government League has shown where the city is losing \$100,000 a year on coal contracts; where a loan of \$300,000 for the extension of water mains was unnecessary; that a loan bill of \$1,584,500 passed by the city council contained items amounting to \$536,000 that were not only unnecessary, but were so objectionable that they should be repealed. The report showed that \$40,000 a year may be saved in one city department without loss of efficiency, and that contracts have been let and supplies purchased, without competitive bidding, at prices ranging from twenty-five per cent to one hundred per cent more than the prices of the market. The Massachusetts Bureau of Municipal Accounts — the first of its kind in the United States — seems to be the forerunner of similar activities in many states, for the state leagues of cities, which are organizing all over the country, are demanding it, and their demands will not long go unheeded. No other single movement in American municipal reform promises so much as this movement for uniform accounts. For with its promise it has brought the guarantee of accomplishment wherever it has been used. The ignorance of misinformation and misunderstanding, more than illiteracy, binds the ignorance of partisan prejudice and class or caste consciousness upon the people, be-

cause ignorance is not the inability to read and write. There is one ignorance of the rich and another of the poor and still another ignorance of the average man. And while schools and playgrounds and swimming pools and libraries and parks and newspapers may do much to relieve the ignorance of the poor, and while perhaps colleges and books and indictments and presidents' messages and jury verdicts may do something to cure the profound ignorance of the rich, understandable municipal accounting must afford the most useful information to the average man who desires to act for the good of all in his relation to his city. And in the struggle of democracy to define its relations with capital and make them equitable, the greatest danger to democracy is ignorance. Democracy is strong enough. It is willing enough. But it must know how to proceed.

Naturally enough we find the influences which have begun the work of securing uniform municipal accounting in American cities have not stopped there. These same influences have pushed the idea so far that among those interested in municipal government the idea of uniform accounts is becoming a national idea, and they have also been at work for ten or fifteen years trying to relieve the third and deepest form of ignorance in our cities — that of party

bias and class consciousness. During the past five years the leaven has been multiplying marvelously. There are three strong organizations devoted to the betterment of municipal affairs. There is the American Civic Association, the American Municipal League, and the League of American Municipalities. Supplementary to these there are, in half a dozen states, state municipal leagues. Wisconsin has one comprising over seventy of her cities and towns. Iowa has one of the strongest leagues in the country — the first league to ask the state legislature to establish a state system of accounting. Illinois has a league, and the municipal ownership idea, which is just now particularly dominant in Indiana, finds its expression in a similar organization. Pennsylvania and Virginia cities are organized by states, and through their leagues know much of the comparative cost of municipal utilities and commodities. So the American cities, though remote and though as different as New Orleans and Boston, know of one another's progress, and through the adoption of uniform systems of accounting, the cities are acquiring valuable information as to comparative cost of light, water, transportation, power, wharf rates, sewage and garbage disposal, paving, the care of the infirm — physically, mentally, and morally. Thus by reason of the state leagues which

are federated into the larger national leagues, there is a growing body of voters in every city that knows the truth about municipal government in so far as the truth may be known through actual practice under modern conditions in this American government. The National Municipal League, which has its headquarters in Philadelphia, was organized in 1894 with less than a hundred members. It now has over 1500 individual members, and 150 affiliated organizations, which have about 150,000 members. As the League has grown in strength it has gathered to it commercial organizations. It now works with the Merchants' Association of San Francisco, with the Cleveland Chamber of Commerce, with the Pittsburg Chamber of Commerce, and with the Indianapolis Merchants' Association. A typical case of the trend of the average citizen away from partisan bias and toward municipal reform is found in the Merchants' Association of Indianapolis. It was organized, as most such organizations are organized, to go junketing around its commercial territory with a baggage car full of provender, drumming up trade for Indianapolis. Then it took up the matter of organizing a credit system, and established local commercial ratings. Finding business injured by an epidemic of smallpox, it took a hand in the suppression of

smallpox. That brought it into city affairs. Then it secured the elevation of railroad tracks, and with its own capital built a system of heating and lighting for the business portion of the town. Gradually it edged into municipal affairs, and a few years ago it found that its city and county governments were so incompetently and scandalously managed that the grand jury was called, and the Merchants' Association to-day has a municipal programme. Incidentally the usual list of indictments, fugitives from justice, and resignations from office followed its summer's work. And the chief item on its programme is a new system of city and county accounts — to be uniform all over Indiana. The path to glory leads but to the ledger — when one begins to reform a city, whether in Indiana or Massachusetts or Iowa or California.

The League of American Municipalities is distinctly a different organization from the American Municipal League. The membership of the League of American Municipalities generally is confined to city officers. Its problems are problems of administration. It looks around at existing conditions rather than ahead at probable conditions. In the League of Municipalities are a hundred and fifty cities in the United States and Canada, among them being New York, Baltimore, Chicago, Buffalo, New Orleans,

Cincinnati, St. Louis, and San Francisco. Its work is intensely practical, and is needed to supplement the Municipal League. The two organizations work together without friction. And they have in common with all municipal organizations, whether national or state, a broad, nonpartisan outlook upon their problems. For the strongest note in all of this movement toward better city government is for independent political action by citizens. The separation of municipal and federal elections or state elections was generally accomplished about the time that the nation acquired the secret ballot. And gradually the party organization in American cities is being overthrown, so far as municipal voting is concerned. If the boss and his financier can afford to operate in both parties in city administration, men who oppose the boss and his master feel that they can afford to follow their example. So we have in Iowa what is known as the Des Moines plan,<sup>1</sup> of city government by commission.

In the twenty-seven American states which have authorized the adoption of the commission form of city government sixty cities now have taken steps to operate under this system. The growth of the commission form of government has been so rapid that it has befuddled the politicians. And the provisions

<sup>1</sup> See Appendix, p. 263.

for government under the Des Moines plan of commission government are so radical that the city politician of the old school finds his occupation gone as soon as the new plan is in operation. Briefly its provisions are for five commissioners for a city of the first class; each commissioner is elected by a direct vote of the people, and his name is put on the election ballot after a nonpartisan primary, in which ward lines are abolished; each commissioner has full administrative responsibility for some particular branch of the city government, and has absolute power; but each commissioner is under the recall; that means that if he does not use his great power wisely, the people have the right to take him out of his office during his term; the legislative branch of the city government is conferred on the five commissioners, subject to a referendum veto by the people, if the action of the commissioners is objectionable; and more than this, the people have the right to initiate ordinances for the council to pass, and no franchises may be given without referring the franchise ordinance to the people for ratification. If this movement toward fundamental democracy in our cities is not checked within ten years, — if it keeps growing as it has grown during the two years last past, — it will be the form of government under which a majority of the city dwellers of



America will be living. Incidentally in passing one may see hope not merely for the cities in this movement. For with a large portion of the American people living in the cities under the referendum and the recall, it is not likely that those outside of cities will rest until they also have these weapons of democracy. If the cure for the ills of democracy is more democracy, the American people are in a fair way to a cure within the next ten years.

In this connection it is interesting to note that Boston, which is abreast with New York in the adopting of a municipal accounting system, is rather ahead of New York in considering the commission plan of government. For Boston has officially investigated the Des Moines plan with great care, and most of its essential features have been adopted.

The following cities are now under the commission form of government more or less like the Des Moines plan:

California: Berkeley, San Diego, Riverside and Los Angeles (considerably modified); Colorado: Colorado Springs and Grand Junction; Iowa: Des Moines, Cedar Rapids, Keokuk, and Burlington; Kansas: Topeka, Parsons, Coffeyville, Leavenworth, Wichita, Independence, Hutchinson, Anthony, Iola, Emporia, Newton, Pittsburg, Abilene, Wellington,

and Kansas City; Missouri: St. Joseph; Massachusetts: Haverhill, Gloucester, Chelsea, and Boston; New York: Buffalo and Mount Vernon, where the people have voted to adopt it, but it must be ratified by the legislature; Idaho: Boise and Lewiston; North Dakota: Minot, Bismarck, and Mandan; South Dakota: Sioux Falls; Oklahoma, Tulsa, Enid, Ardmore; Tennessee: Etawah, Memphis, Bristol, Clarksville, Richard City; Texas: Galveston, Houston, Palestine, Waco, Ft. Worth, Austin, El Paso, Dallas, Dennison, San Antonio, Greenville, Sherman, Beaumont; North Carolina: Charlotte; Washington: Tacoma.

The referendum, however, is not peculiar to the Des Moines plan. More than half the better class of American cities now have it in some form or other. Most franchises and bond issues in American cities are now submitted to the people before the franchises and bond issues become legal. The old days when the boss could sell a franchise are passing. And where the people vote upon such matters they are not guided by parties. They are not blinded by ignorance. For the responsibility of power comes to them — even in the wards where illiteracy is the highest, — and the people act with good sense and a feeling of equity which is the endowment of the Teutonic man wherever he is found.

The effect of this growth of democratic participation in city affairs has been felt by capital. It is said by those who have their eyes upon the country's bond market that as it stands to-day, no franchise can be framed that the people will vote for which bond buyers will take. This of course is merely a saying. But it has an element of truth in it. A short-term franchise, with strict provisions for regulation of rates, and unequivocal provisions for first-class service, translated into commercial terms, means that the bond issue will be only large enough to cover the physical value of the property in question, as the people having the power of rate regulation will demand rates based pretty nearly upon the actual value of the property. So the promoter's profit in franchise transactions is passing with the boss's power to sell franchises. The referendum is the economic as well as the social manifestation of the rise of the common people. But it does not spell socialism, nor the abolition of capital. If the bond trader cannot make the promoter's profit on bond sales, under the referendum, always capital honestly seeking investment can find it in buying municipal bonds issued to pay for the municipal ownership of the utilities which the people will construct or buy for themselves, even if the promoter fails to float his proposition.

In the American states we find the power of democracy growing, and as money goes out of politics, profits of promoters decrease; but investments at low rates of interest become more secure. In the cities as the people take a larger part in city affairs, as corruption in politics ceases, the boss and the promoter go out of use hand in hand. As the people rise, the plunderers fall. Honest investments are not curtailed by the rise of the average man in American life; but fabulous speculative profits in public utilities are becoming things of the past.

Now all this struggle with ignorance in its first phase through the school and playgrounds and libraries to reduce illiteracy; in its second phase through municipal administration to get the truth before the common people, and in its third phase widening the responsibility of the citizen to remove partisan bias and class consciousness has cost some one something. Some one has been taking time from his business, money from his purse, and privileges from his ancient rights. Everywhere there has been surrender — sacrifice. And in so much as we have subdued ignorance we have been circumscribing greed in the government of our cities. The affairs of the folk-moot of old were simple affairs that any adult might understand. But the folk-

moot of our great cities is complex. Justice is not obvious to the illiterate, the misinformed, or the prejudiced, and yet until the folkmoot is able to establish justice — to deal fairly with the man who wrongs the city — the equilibrium will not be found, and our modern problems of city administration will not be settled. For there is never a balance until it is the right balance; wrong, whether it is against the poor man or against the rich man, will keep joggling the scales. And so long as it is evident that Americans in their cities have put considerable self-sacrifice in the balance it is fair to ask what has been gained? What really has been accomplished? Wherein is the citizen better off than if he was ignorant, deluded, and prejudiced? Wherein has greed been checked? The census bulletins indicate that 148 American cities of over 30,000, having a population of nearly 23,000,000, had in 1908 a per capita debt of \$60.54, being an increase of debt of twenty-three per cent in five years, while the municipal expenditures in those cities increased in five years from \$13.36 to \$14.90. The debt is increasing, and the outgo for expenses is but slightly less than the income for receipts. If Mr. Gradgrind desires the facts, they are disconcerting. They indicate that as municipal administrators we are tetering on

the edge of failure with all our fine talk. Yet the facts are not the truth. For nearly twenty-seven per cent of the increase in the per capita expenses in those years has been for schools, and the increase of debt has been mainly the purchase price of public utilities. For instance: the census bulletin shows that less than one third of the electric light and power plants in the United States were municipally owned in 1902. That number has now increased to over two fifths, and in the municipal ownership of waterworks plants the increase is much larger. The extent to which municipal ownership of public utilities has gone in recent years is shown by the "Handbook of American Municipalities," a most accurate compilation of municipal statistics issued by the League of American Municipalities. This handbook prints the statistics of two hundred and eight cities — large and small, and all but sixty-five of them are owners of some public utility, and when one eliminates the smaller cities from the reckoning, one finds that in cities of over 40,000 only seventeen out of a hundred are under the old order. And the growing debt of our cities, which now exceeds in per capita the national debt, is an evidence of municipal prosperity, not of adversity. For the revenues from these municipal industries are in excess of the expend-

itures. They are helping to pay for the schools, the parks, the libraries, the playgrounds. Thus the sacrifice of those citizens who have worked to check the ignorance of the people of all grades of society in the city — the work of the underpaid school-teacher, and the honest school board member, the work of the politician who sold his soul for a park in his ward, the work of the reformers who demanded to see the books of the city, the work of the city politician who fought for separate elections for his city and for a non-partisan judgment from the people in city affairs, the work of the committees that toiled nights and days for nothing to get at the facts when the water-works, or the electric light, or the docks and wharves were purchased — the work of these people has been justified, and the sacrifice of the few has been transformed into the blessing of the many.

And yet only as the many have been able to return to the city what it has given have they been really made the beneficiaries of the vicarious sacrifice. That is the real test of our cities. It is not important to know what our schools cost, but what they yield. It is not of significance to see the books, if we do not improve the conditions they show. It is nothing in the long run to break party caste, if we do not build something better. It is of no avail to put hoodlars

in jail and elect others to fill their places. For boodling is the flower and not the root of evil. And the evil is ignorance manifested in selfishness among the voters, and if our citizens have not learned the common sense of kindness, they have learned nothing.

During the past seven years the American people in cities have been investing something like \$5,000,000 a year in public utilities. Some utilities they have bought. Some they have built. But in either case they have taken business that was private and made it public. The movement toward municipal ownership is strong, definite, unwavering. It has been growing steadily since the first year of the new century. But it is only important in view of whatever honesty and integrity it has shown in the public judgment. Therefore we may ask: How has the transfer of business been conducted? Has any one been wronged? Have injustices to the former owners been done? Is it not a most remarkable testimony to the sense of justice and innate decency of the people of American cities that, in all this municipal trading, no one has been reported as having been seriously injured? The democracy must have been fair to capital, or there would be now an accusing party to bear witness to the democratic ruthlessness and greed. But the people seem to have replaced private



greed of capital by public kindness — overcoming evil with good, the only possible way to ultimate victory. The people living in American cities have a billion and a third of debts. These debts represent largely their industrial activities. They represent subways constructed, lighting plants bought, docks and wharves acquired, parks laid out upon confiscated ground, schools established, market places located, hospitals built, equipped, and operated, playgrounds and farms for boys and girls maintained, sewers and garbage desiccating plants constructed, waterworks and heat and power plants taken over or erected. Surely if the democracy was unfair, some one would organize the complaint against its business methods. The people have been extravagant; they have been even prodigal and foolish in some of their industrial ventures. But they have not been unjust. The final social judgments of democracy in our American cities have justified in the public kindness all of unselfish effort that has been devoted to them. And, moreover, with the manifestation of the fairness of the people, a respect for them has grown up among politicians. There must always be a ruling class in America — the class that makes politics its business. And that class will not be reformed by putting its members in jail — not particularly. It is being re-

formed, however, in our American cities by the growing moral intelligence of the average men. Our government is representative. Our ruling classes must be of our own kind. And as the Municipal Researchers rise Tammany will fall, not because the Researchers happen to be better men than Tammany men, but because the average man is of a higher type than the Tammany average. Hence in a score of our American cities the power of the local boss is sinking as the intelligence and honesty of the people is rising. The whole tendency of municipal politics is away from the irresponsible boss to the responsible ruler, from the aristocracy of the machine to representative government, because the responsible ruler represents the public's moral average better than the irresponsible boss. The boss is no worse than he has been for a generation. It is the people that have changed. The meaning of the Des Moines plan of municipal government and the real significance of the movement for uniform municipal accounting is to simplify responsibility in municipal affairs, and fix it definitely where it belongs. It is not a movement for cheap government, for lower taxes, for better service, so much as it is a tendency that must follow the enlightenment of the people — a tendency toward real self-government. It is the intelligent

rise of the individual, and so far from being socialistic — in the sense that socialism is commonly supposed to be the submersion of the man in the mass — the modern movement in American politics is bristling with rampant, militant, unhampered men crowding out of the mass for individual elbowroom.

The problems before American cities now are fundamentally problems arising from aspirations of democracy, struggling with ignorance and greed. These problems manifest themselves in many forms. The gravest problems are those that come from the regulation and control of public utilities. For the boss gets his money from the man who is after a franchise, or who has a franchise to protect. The evils of ballot-box stuffing, of lawbreaking, of vice, of petty grafting, follow in the train of the boss and the men whom he elevates with his tribute levied upon the public service corporation. Banish the boss, and the protector of gambling and organized vice is gone. It is easy enough to say that when the source of the boss's supply is cut off that he will disappear. But that means the municipalization of all public utilities — light, water, heat, power, transportation, and communication. The people have demonstrated that they are competent to operate their water supply. They are taking hold of light, heat, and power with

much sense and ability. They can sprinkle and clean their own streets, just as they drain them and remove sewage and garbage. These matters are comparatively simple. Cincinnati owns a railroad. Chicago is in partnership with the transportation companies. San Francisco owns a street-car line. New York owns her subways. Most cities own their docks and wharves. But municipal ownership of street railways and telephones — there is the flag of truce. It is not peace, probably, but a protocol. In the meantime franchises are expiring, and the grand jury is kept busy! It is likely that the people are not prepared for municipal ownership of street railways and telephones. They have come long distances in ten years. They have a firmer grip on their local governments than ever before. But the schoolhouses and playgrounds and parks and libraries are filled, and there are crowds before the bulletin boards of the bureau of Municipal Research; also party control is distinctly loosening; and inevitably the protocol with the transportation companies must end, and telephones as private enterprises may count their days after the street railways follow the waterworks and the lighting plants. For as the Supreme Court<sup>1</sup> has indicated, capital in so far as it is invested in concerns having a

<sup>1</sup> *Munn vs. Illinois.*

public use is in that public use public capital, and must be subject to control for the common good. And in a city the common good requires the establishment of rates that will not yield large profits to capital invested in public service corporations. For the common good such capital must be transferred from those funds paying profits in dividends on stock to those funds that merely may pay interest on bonds; so public service corporations must submit to public ownership. Certainly it is a new tenet for America, but it seems to be inevitable, considering the direction that American democracy is taking, that as the people grow able to govern themselves, they are able to finance themselves, and thereby to overcome the evils of business impeding their progress by operating the irritating business impediment themselves. Moreover the tribute public service corporations pay to local bosses to protect special privileges brings bad government to the city: the more tribute, the worse city government. So the more the lawyers of the franchise owners pay to bosses to help in politics, the sooner will the holders of stock in private corporations find themselves holding municipal bonds in lieu thereof. The harder the pressure is from above, the stronger the rebound will be from below.

This rebound is not local and sporadic. It is not

socialistic. For William M. Ivins, Republican candidate for mayor of New York in 1907, when attorney for the Public Utilities Commission of New York City, by appointment from Governor Hughes, after two years of hard technical investigation of the new subject, declared that the private operation of public utilities under franchises is a failure. He is for public ownership. Charles Francis Adams, at the head of a commission appointed in Massachusetts, after investigating public utilities all over America, reports the same conclusion. New Orleans and San Francisco are installing municipal waterworks. Los Angeles, under her new charter, providing for the initiative and referendum and the recall, is not only installing municipal waterworks, but electricity, and water for irrigation, and power for commercial purposes. Under her new charter Los Angeles is empowered to buy all of her public utilities, and Chicago has just granted a telephone ordinance with a right to purchase reserved in it. In Minneapolis the public ownership fight is the leading issue, just as it is in Detroit. In Galveston, where the taxes have been increased to nearly sixty mills, the leading citizens, having secured such good returns from their tax investment under a commission system of government, have signed a great petition asking the commis-

sioners not to retrench, but to keep on in the good work. The power of the public service corporation through the city boss is on the wane. Moreover, those who are on the wrong side know that it is nothing but a masterly retreat. Said W. Carl Ely, president of the American Street and Interurban Railway Association, speaking of the movement to control public service corporations: "This movement is not confined to any state. It is sweeping over the whole world. The people are asserting themselves. We might as well seek to dam Niagara as to stop it. Deep down in our hearts we know it is right. Let us be men enough to recognize it; let us cooperate with the people and let them understand we are working together; be frank with them, and we shall find that they only want fair and square treatment. We have had trouble because there was captious fighting against proper measures. Let us deal with the people in the most open way possible and 'fare trouble,' and all other troubles, will disappear." And more remarkable than the words themselves is the fact that these words were received by the association with "great applause and general approval."

Less in importance after local self-government free from corporation domination, is the demand for home rule for cities, free from state domination.

For the one complaint universal to all American cities is against the interference of the state in local matters — chiefly local matters of finance. Write to any American mayor, and he will tell you that if he could rub Aladdin's lamp, he would ask for home rule. And he desires home rule chiefly so that the city can increase its debt. The people in our large cities are restive. They wish to do more than they are doing. The feeling is universal. A letter from the bureau of information of the American League of Municipalities says:—

“I have before me notes concerning three great cities, Chicago, Philadelphia, and Cincinnati, each of which is preparing to make demands on their respective state legislatures for RELIEF. They argue for larger debt limit.

“Chicago asks for legislation that will permit an increase in its bonded indebtedness of about \$16,000,000. Philadelphia cries that it is unfairly handicapped by the present limitation of the municipality's bonded indebtedness to seven per cent of the realty assessments. Cincinnati has organized a committee to ask the legislature for an amendment to the so-called Longworth act. This committee will ask that the city may at any time issue bonds without limit for street and sewer improvements, the erection of viaducts and the construction of subways, the laying out of parks and boulevards, the establishment of public bath houses and municipal lodging houses, and the building of a new hospital and a new house of refuge.”



In considering this problem of public service, it is important to bear well in mind this fact: that these public service corporations that are bones of contention in our cities first of all serve our homes. Light, water, heat, and transportation are home comforts. Moreover, they are no longer luxuries for the rich; they are more diffused among us than are the comforts of the well-to-do. Light, heat, water, and transportation are the necessities of all the people, as society is organized to-day. Combined, these utilities are the footing stones of the foundation of the creature needs of a civilized home in every American city — large or small. They are labor savers, and hence industrial emancipators of women. A penny increase in the price of any of these utilities, or any variance from good service, is a serious matter in the household economy of the people. And we Americans are home dwellers before we are anything else. It is absurd to say that elements so intimate and vital in the happiness and efficiency of the home — our most important institution — shall not be entirely under our own direction and control, even if that direction and control involve ownership.

As the forces of education turn out from the schools and their auxiliaries citizens who think, the field of municipal activities wherein these people live must

broaden. They cannot remain stationary. We are in the youth of our race life. Yet we hold to the racial institutions that made us conquerors of the Mongol and the Semite: the home and the folk-moot. And the strong definite movement all over America for direct nominations by the people, for the referendum in the cities, for nonpartisan city government, all these are the return to the rule of the people. What is this universal movement in our American cities for home rule but the old race call for the rule of the folk? It is set as firmly in our bones as the lust of land. And we are as ready as ever to fight for the rule of the people, whether the contest be set at arms, in politics, or in business. Whenever it has been a question of self-government and municipal ownership on the one hand, or boss rule and private ownership of the municipal industries on the other hand, New York and Chicago have voted for municipal ownership. Our bourbon statesmen may talk themselves black in the face telling us that municipal ownership requires the abandonment of the traditions of the fathers; but when private ownership means injustice or the domination of bosses, something deeper than constitutions and traditions stirs in the blood. For we are a freeborn people. Moreover, we are a young

race. We still see visions. And the genius of a people that can conceive and accomplish self-government under a king and a monarch or a republic, will keep self-government pure and undefiled, under whatever scheme it works out for the control or ownership of its public utilities. So long as the utilities serve a home that is sound and wholesome and clean, that home will breed men and women with the clear strain of the blood that is not dismayed or vanquished by any broadening scheme of local self-government. What we have gained in three thousand years of pilgrimage westward across the earth we have kept, and we are stronger than ever before in our struggle for the retention of the home and the home rule. And the city, which seems to be in a fair way of becoming the prevailing type of local government on this continent, will be a free city.

A curious miracle — but how old — is this city life of ours. Here in these American cities the race migrations of Europe are epitomized. The hand of fate seems spinning the ancient web, with the primeval woof. From the skein in the upland plains behind the Himalayas the moving hand scattered the threads through Europe from Asia Minor to Gibraltar and northward to the Baltic and the Arctic Sea. Now the hand is gathering up the threads through our

American cities, weaving the pied ravelings into the cloth for whatever wedding garments fate may be making for us in the fullness of time. And yet, when the Celt and the German came and pushed the American out of the slums and up and on, we feared for the nation; and when the Italians crowded in and pushed the Irish and the Germans up and on, again we were afraid; and when the Norsemen came charging through our cities to their homes on the prairies, and pushed onward, again we feared for our institutions. And now that the Greeks and the Slavs and the Armenians and the Huns and Poles are pushing the Latin races up from the slums and deeper into our civilization, we need not tremble for our institutions. For these strangers are all of the old blood. They will merge into the old blood again. The American is no sport, no chance child, no woods colt in the races of men. He is the flower of the purest blood on earth, the youngest blood on earth. And the unseen hand of fate that is weaving the garment will weave ignorance and greed out of its warp, and make it strong and fine and clean. And so these cities of ours — spindles in the hands of fate — dirty though they are, and befouled, must keep moving incessantly as they weave the garment.

## CHAPTER VI

### THE LEAVEN IN THE NATIONAL LUMP

THEORETICALLY this nation lives under a government of laws sustained by a written Constitution. Practically it is a government by public sentiment. This does not mean that it is a government by public clamor. But it does mean that whenever the people have believed in a public policy, whether it was the direct election of the President by the people, or the emancipation of slaves, or the issue of greenbacks, or the acquisition of colonies, or the direct election of United States senators, and have believed in these things deeply enough to sacrifice their own personal comfort for them, — to fight for them in short, — the Constitution has never been strong enough to hold them back. The Constitution was meant to suppress clamor, not sentiment; the difference between the two expressions, being — broadly — that clamor is the desire to reform some one else, and public sentiment is the desire to reform one's self. Public clamor is essentially selfish — tyrannical. Real public sentiment is essentially unselfish — democratic. For

democracy is, at base, altruism expressed in terms of self-government. And so to know what kind of a national government we really have in America, it is as necessary to study our public sentiment as it is to examine our laws and consider our written Constitution.

For while a city or a state may exhibit some sporadic legalization of clamor, the area of the nation is too large, geographically, mentally, and morally, for sheer clamor often to get legal recognition. A democracy must be big. Size is a fundamental part of it; and our very bigness here in America has prevented many vital mistakes. Clamor, from California to Maine, and from Florida to Oregon, however loud and terrifying, generally wears itself out before the machinery of law can stamp it and authorize it. So, as a rule, our federal laws are observed; not because the national government is so ruthless, but because its laws are just.

And in taking inventory of our national progress during the decade or two last past, we must consider, along with our new laws, the public sentiment that made them, and that sustains them, and is demanding the extension of these laws into larger areas. For the sentiment that made the laws is more important than the laws themselves. And the study of

the organization and growth of sentiment is an important part of the work of the student of government. For much error prevails about the way this nation thinks. Commonly, newspapers are supposed to be the great factories of sentiment. Gentlemen in the pillory of public sentiment blame their discomfiture upon the newspapers and magazines. And, if these gentlemen are in funds at the moment, they buy other newspapers, and subsidize other magazines, and — accomplish nothing. For newspapers and books and magazines do not make sentiment. They merely voice sentiment. Often they make clamor, but public sentiment grows. It is as evanescent as the wind, and as resistless as the waves. It may be dammed, but not permanently checked. And in America, public sentiment grows after the manner of the genius of the people: by parliamentary organization. Given an idea in common to three Americans, and the best known becomes president, the most effective secretary, and the richest of the three treasurer. These are our faith, hope, and charity.

“To believe your own thought, to believe that what is true for you in your private heart is true for all men — that is genius,” says Emerson, and admonishes us, “Speak your latent conviction, and it shall

be the universal sense; for the inmost in due time becomes the outmost." So public sentiment grows in America. An idea comes to a man and simultaneously to his brother a thousand miles away, or perhaps in the next block. The idea draws them together. When they meet, there is a third and a fourth with them, and they organize. The idea has become a force in the world. It has the seed of events in it. If men are willing to sacrifice their time for it, to give up their comforts for it, to live for it, and, if need be, to die for it, the group that fostered it multiplies by division, in some curious way, into a multitude of groups, all pressing the idea into life. There is the state association, two, three, perhaps four state associations — all advocating the righteousness of the idea. Then comes a call for a national association, and the wildfire is out. State associations spring up everywhere. A national bureau is set up promoting the idea, fostering its propaganda, bound to its work in the world, and then follows a national law, and the private organization becomes a public institution.

Ideas in various stages of incubation may be seen all over the country. Where the demand for pure food was ten years ago, the contest against tuberculosis is to-day. And ten years from now, tubercu-



losis may be as arch an enemy to the laws of the republic as adulterated food is to-day. And here is another curious thing about the advancement of ideas: Just as the same hundred men or so are the directors of all our big banks, of all our great railroads, and of many of our public service corporations — directing the centripetal forces of American society, — so another group of a hundred men, more or less, is found directing many of the societies, associations, conventions, assemblies, and leagues behind the benevolent movements — the centrifugal forces of American society. It is Morgan, the Goulds, the Harriman interests, Winslow Pierce, Ryan, Stillman, and their associates, against Seth Low, William Dudley, Foulke, the Pinchot interests, Samuel McCune Lindsay, Jane Addams, Clinton Rogers Woodruff, and their associates. They are captains of two opposing groups — capital and democracy — each necessary to the life of the nation, each performing his organic function in our body politic — the assimilation of the great discovery of steam into our social body.

Thus our history is made by men organized in parliamentary form bound together by an idea, often opposing a force not always organized save by the instinct of fear under attack which makes the community of interest in business and in politics. For

instance: One of the most important laws put on our federal statutes in two decades is the Hepburn railroad law. It prohibits discrimination between individual shippers reasonably well. It is correcting a serious and sinister abuse in our national commerce. The law is fairly well observed. The sentiment of the people is behind it. Here is the leaven that changed the national lump. Before the passage of the Hepburn law, there was an organization among American business men known as the "Interstate Commerce Convention." It was composed of state and local commercial and trade organizations — boards of trade, fruit growers, lumbermen, and the like, in thirty-four states, and in addition to these it comprised thirty-five national associations; like the American Hereford cattle breeders, the National Association of Manufacturers, the national Paint, Oil, and Varnish Association, the National Hay Association, and similar organizations that one rarely hears of in the newspapers. This Association of associations, called the "Interstate Commerce Convention," met from time to time and formulated its demands. In those demands was sacrifice for some associations, abnegation of special privileges by others, selfishness in some quarters and meanness in others, but on the whole what they asked

for was fair. They appealed to the nation. The people were convinced. The newspapers began to voice the sentiment of the people. The president recognized the sentiment, and realized its justice. The railroads controlled the machinery of politics. They had hundreds of subsidized newspapers. They hired men to establish bureaus and to write controversial articles, and paid editors to print a refutation of the justice of the shippers' demands. Money was spent without stint. Millions might have been used, if they had been usable. The Interstate Commerce Convention had raised \$22,855.<sup>1</sup> Gossip said at the time, and the lobbyists for the railroads boasted, that they had two millions. Probably they had no such sum. But they might have had ten. And yet the \$22,000 of the shippers was enough. Half as much would have done as well. For money in America does not make sentiment. Printing presses are as useless as cheese presses in making sentiment. Public sentiment comes out of the consciences of the people, and it cannot be fed to them in any sort of medicinal form from newspapers, magazines, or books. So the railroads surrendered with all their money. The Hepburn law was enacted. The genius of the people for parliamentary organization, outside of

<sup>1</sup> See Appendix, p. 262.

constitutions and law saved them. They sacrificed something — did these hundreds of thousands of people in the organization — not money, but time, and convenience, and special privileges, — passes, inside rates, rebates, concessions, and what not of the crumbs of commerce, and by giving to the common good they won for the common good.

Take another instance. The people of this country were eating poisoned food. The president, the secretary, and the treasurer met, discussed the matter, and the Pure Food Association, greatly to be sniffed at by the intrenched forces of culinary poison, began its work. It had no money. It had no newspapers. Newspapers and magazines ten years ago were taking millions of dollars in advertising from manufacturers of improper foods and drugs. But the pure food show began to appear in American cities and towns, just as the tuberculosis exhibit is moving over the country to-day. The people learned the truth. The wholesale grocers' associations took up the fight, and in spite of all the money behind the manufacturers of the adulterated and poisonous food, the pure food and drug act passed congress in June, 1906, and became a law. The sacrifice of hundreds of men and women, who were willing to give their time, their service, and their names to the cause of

pure food for the masses, was more potent than all the legislative machinery, all the lobby of retailers, all the flood of telegrams from cattle growers, and all the forces of selfishness.

Observe still another illustration of the force of public sentiment in our American life. There is the National Civil Service Reform League. The forces of plunder and graft in the United States hate that league and all its works. The high-caste politicians of the states, of the cities, and of the nation make this league the particular object of their curses. If organized politics, with all its power and with all its machinery, could stop the spread of the civil service, it would be a dead issue. Yet this little handful of men in the Civil Service League — most of them highly incompetent in the machinations of practical politics — has organized the sentiment of the American people for justice in the public service, and as a result during the last eight years much has been accomplished. In 1901, sixteen hundred positions in the war department were restored to the classified service after removal from it in 1899; in 1902 two hundred and fifty employees of the temporary government in Cuba were added to the classified list, and labor regulations were made for the Washington departments. The next year the Shipping Commis-

sioners were restored to the classified service and the Philippine teachers added, and in 1904 the classification of the subordinates in the Isthmian Commission began, and the year following the whole labor service was put under control of the Civil Service Commission. Since then the fourth-class postmasters have been protected from political assaults, and a rule has been established, putting presidential postmasters under the merit system; under this rule they are reappointed without reference to congressional indorsement or opposition, if their records are in the first grade of the service. And under the influence of the National Civil Service Commission, we are taking the first census ever taken in America not compiled by spoilsmen. The states of Wisconsin, Illinois, New Jersey, Colorado and Kansas have adopted laws which protect certain employees in certain public institutions from removal for political reasons, and in a measure establishing the merit system. Moreover, San Francisco, Los Angeles, Des Moines, Cedar Rapids, Atlanta, Baltimore, Duluth, St. Louis, Wilmington, N. C., Oklahoma City, Portland, Philadelphia, Scranton, Pittsburg, Norfolk and all of the sixty cities operating under the commission plan of government, have established civil service rules for one or more of the city departments. All of this leaven of righteousness is

worked by public sentiment, and the particular organism that promotes that sentiment is the National Civil Service League, which never spends over \$9,000 a year. Money plays a small part in directing the actual current of American public life.

In 1901 and the two years following, commercial bodies and labor unions all over the land began petitioning Congress to establish some sort of a bureau of commerce. And in 1903 the Department of Commerce and Labor was established. It marks the greatest advance in our government's relation to the individual that has been taken for a generation. For the right of the government to examine the books and accounts of every American business concern and upon its own judgment of expediency to withhold or make public the result of its examination, in effect is legalized. The precedence of the common good over the private right, the rights of democracy against the rights of capital in even private business, is established in law. This establishment makes all business public business so far as its status before the law is concerned. The altruism of democracy has no stronger fortress in America than the law upon which the Department of Commerce and Labor is founded. Yet it was founded without excitement, without clamor, because the

president, the secretary, and the treasurer of a thousand business organizations — willing to reform themselves, to subject themselves to inspection and regulation, asked for it.

And now we come to the core of the so-called reform movement in America; for it is at bottom a national movement. What we find in ballot laws and democratic tendencies in states, what we find in regulative and restrictive legislation in the various commonwealths, what we find in the reshaping of charters and remaking of municipal governments are but the local symptoms of our national adolescence. They are growing pains of the new life that is upon us. When President Roosevelt interfered in the anthracite coal strike early in his administration, he did not create the sentiment which backed him up so loyally in his extra-constitutional act. A score of organizations for a decade had been making sentiment which recognized the common good as paramount to the private right. The right of property as against the right of the people was a shell. It was worm-eaten by public sentiment, and however the coal operators might chatter about their divine rights, the real divine right was that of the people to keep warm at a reasonable price. Chief among the organizations propagating the right



of the people to industrial peace was and is the National Civic Federation. It is composed largely of rich men who have vision to see that they must surrender to the common good much of their vested rights, and generally these men find joy in it. Among other members of the Federation are labor leaders who see that they too and their constituents must give in before the common good, and take joy in the giving. That sentiment is abroad in America; it is the soul of our new-born democracy. So that one who looks at the large national movements of the decade now closing will find that those movements which have become national laws are laws looking to the distribution rather than the accumulation of wealth. Practically all the large national organizations which jam the trains annually going to their conventions are fundamentally altruistic. There are a million Masons in the United States. There are six million members of fraternal insurance companies distributing annually nearly \$6,000,000 in sick and death benefits, and giving almost as much more in free fraternal service from man to man in time of trouble. For this democratic tendency of our times does not express itself well in dollars and cents. But always it is ready to respond to any call, whether political or social or economic, when the voice is clear

and the motive unblurred. When Theodore Roosevelt came to the White House, he merely saw the obvious thing, and did it, and became a force for righteousness—the first leader the nation has developed since Lincoln — because he had a righteous people behind him.

The important measures accomplished by the Roosevelt administration are these: the regulation of corporations, the beginning of the Panama Canal, the enactment of the pure food law, the reclamation of the desert by irrigation, the preservation of the forests and water rights, the extension of the civil service, the establishment of peace under the Portsmouth treaty. These may be called the Roosevelt policies. Yet they are not his. He merely adopted them. He found in every case a strong parliamentary organization, working for these things. Moreover, in every case these organizations were poor in funds and rich in men, and were fighting entrenched interests rich in funds if often poor in men. The struggle of the Interstate Commerce Convention with its pitiful little \$22,000 against the millions of the railroads has been noted. The same forces that fought the Hepburn law and the establishment of the department of Commerce and Labor opposed the Panama Canal undertaking. For the canal will

play havoc with transcontinental rates. And the packers and poison dealers who opposed the pure food and drug law were beaten by the same little David, in another coat, who slew the railroad Goliath in the first two battles. The Irrigation Congress had to fight the cattle men and the sheep men who had the ranges and desired to keep them, but the men with vision won, and the fields were cut into "quarters" and "eighties" and the desert blossomed as the rose. In the contest for the preservation of the forests, the timber cutters have had nine points of the law. They have had possession, and they have had unlimited funds. And the American Forestry Association, the Appalachian National Forest Association, the International Society of Arboriculture, the Joint Committee on Conservation, and the Society of American Foresters have had less funds than it takes to give a national lumbermen's banquet — yet the feeble folk built their homes among the rocks of simple justice and are winning, and inevitably must win. When he established peace at Portsmouth, President Roosevelt was not alone. There was with him the sentiment of a nation fostered by the American Peace Society, maintaining eighteen lecturers in the field, the Association for International Conciliation, the Universal Peace Union,

and the Lake Mohonk Peace Conference, not to mention thirty-two million of church communicants in the nation. The history of the Roosevelt administration, with its wonderful advance in our national institutions, has been the history of the expression of the people rather than the growth of the people. Like Homer, when he "smote his bloomin' lyre," Theodore Roosevelt found the people bursting with pent-up righteousness, "and what he thought he might require, he went and took." And yet without the leadership of Theodore Roosevelt, without his personality to dramatize the growing righteousness of the people, it is not difficult to imagine what calamity of misdirected radicalism might have been visited upon the nation. If that righteous wrath of the people at the selfish forces of society had not found expression through President Roosevelt, it would have been voiced through demagogues at an awful cost to the nation. His genius lies not in making sentiment, but in directing it into sane, conservative, workable laws.

Since the Spanish War, the whole movement of the people from crass materialism — so evident in our business and politics and religion — is the movement of an organizing people. It has been as mysteriously regular as the growth of life in its inanimate

form. It is as though the social body were the host of a myriad altruistic bacteria, each somewhat different from the other, but all having a strong centrifugal movement, and all united to produce a democratic tendency that is not a disease, but a growth. The blood of our national life is thick with these germs that are consuming the poison of selfish decay as manifest in sheer gross capitalism that threatened us, and these altruistic bacteria show, not senility, but youth in us.

It is therefore proper to examine a few of the hundreds of more prominent organizations having a national scope and character, and aiming at distinct betterments of our common life. For these organizations are prophetic. What the civil service reformers have done, what the peace advocates are doing, what the conservators of national resources are in the way of doing, what the commercial bodies of the nation have well under way, in the matter of railroad regulation, ocean competition, and corporate restriction, the other organized forces of righteousness may well expect to accomplish. For they are all common symptoms of a national condition, and whatsoever is worthy and of good report will prevail.

One of the most ominous shadows casting itself before some coming event in our national life is

the American Federation of Labor. And it is important, not because it affects so many people, though probably ten million Americans are directly affected by the life of the Federation; it is important because of the way these ten millions of people are affected. For all of them, men who work and their wives, sisters, children, sweethearts, fathers and mothers, and sympathizing friends, make the Federation, or some one of its component parts, their religion. They are willing to sacrifice not only their comfort for it, but time and again they do sacrifice their very necessities for it. Their conduct — which is nine-tenths of life — is regulated by the Federation, and their creed in religion and politics is more or less biased by it. The material results of their altruistic faith in the Federation may be seen in the fact that the members paid \$1,257,244 in death benefits in 1908, and \$593,541 in sick benefits, \$205,254 in unemployed benefits, and \$2,549,759 in strike benefits. Here is a grand total of four and a half million dollars raised by men to whom a dollar means more than a hundred dollars means to the forces these men are contending with. And when one considers what a vast amount of time and thought and service has come in proportion to this money for this cause,

one must recognize that eventually the men who devote that sacrifice in money, and that time and thought and personal service to the common good, must accomplish real results. For whatever error now is impeding them, whether error in their own demands or error in the claims of their opponents, must go down before such an organized force. For this is not a material world. In the organization of this thing we call civilization, there is no force so resistless as kindness; and this vast kindness of the workers to their brethren — whatever of cruelty, whatever of meanness, it may call forth, either on their own side or on the side of their antagonists — in spite of the evil, the kindness must win some substantial reward in the end. Laws may be temporarily denied to them, courts may check them, and executives rest within their legal restrictions, but in the end, whatever there is of unselfish justice in the demands of labor for a humane day, a clean environment, and a living wage, will come to them under national law. For when one considers how far labor has come in fifty years in this country, how large has been its actual as well as its comparative betterment as the result of organization, the future becomes something more than a guess. For to-day labor organization is of a higher type, the leaders have

a broader outlook, and the devotion of the men and women inside the organization is of a more intelligent kind than ever it was before.

So labor to-day is enlisting in its cause thousands who are not allied with the trades. The Child Labor Committee and the Consumers' League and the National Civic Federation, for instance, are organizations outside the trades, that are making an enlightened public sentiment for the demands of labor. The Child Labor Committee has secured the passage of laws restricting the employment of children in practically every American state, and there is talk of a Bureau for the Consideration of Children in the national government. The Consumers' League is devoting itself successfully to the work of securing recognition for the union label from the buying public; but the most important work done for labor outside of the labor unions is being done by the National Civic Federation. And that work is not the settlement within the past two years by arbitration of street-car strikes in San Francisco, New York, Chicago, Newark, New Orleans, and Pittsburg; nor the settlement of strikes in the textile trades and building trades. The work of the Civic Federation until recently was rather beneficent than scientific. But the real work of the Federation be-



gan when at the invitation of President Seth Low, John Mitchell took charge of a department known as the department of Trades Agreement for Industrial Peace. This department headed by Mr. Mitchell in an organization financed by a sufficiently large per cent of the employers of labor in the country to make a governing minority, marks a definite meeting place for labor and capital, wherein they may treat as equals. In selecting Mr. Mitchell and giving him authority to act, the employers have met with fairness the self-sacrifice of labor, and a real basis of agreement may be found. It will be in effect an extra-legal national bureau of arbitration. It is the history of our government that we have always taken over for government use any good thing developed by the people. For this idea is following the well-known life history of our institutions. First we have the society or organization; next comes the private establishment securing results; then follows the law, putting the whole matter under the federal government. Our national government is jealous of large success outside of its domain, in any public matter. And whether it be the director of the Office of Public Roads, who is annually promoting the construction of thousands of miles of first-class public roads, or the superintendent of the Life Sav-

ing Service who is annually directing the underpaid federal employés who save hundreds of lives, or whether it is the chief of the Bureau of Chemistry that enforces the pure food and drug law — wherever the government finds an organization working unselfishly to an end that is unmistakably for the common good, that organization eventually becomes a part of the federal government. So the department of Trades Agreement of the National Civic Federation has only to prove its value for the government to legalize it.

Even the Consumers' League is not safe. It may be taken over in time. For it is awakening buyers to the cruelty of late shopping in the Christmas season; it is working for a shorter day for women; and through its influence Louis D. Brandeis of Boston gave his services as ancillary counsel of the attorney-general of Oregon, and directed the work of preparing the brief upon which the United States Supreme Court rested a unanimous decision in favor of the law which limits the hours of labor for women and children; so that now no legislator need refuse to support a short-hours bill for women and children on the grounds of its constitutionality. And the work of the twenty-six leagues under the National League in twenty-two states is now turned toward securing

state laws in harmony with the United States Supreme Court decision. When one considers the crass brute force of the organized greed which this league is opposing, with its meager funds, and its simple faith, one longs to see the combat quicken to its inevitable end. For it will be an object lesson in the impotence of wealth and material power that will put heart into millions of men and women who fear to trust their instincts.<sup>1</sup> Coördinate with the Consumers' League, but in no way related to it, is the Legal Aid Society, with branches in New York, Boston, Chicago, Philadelphia, Denver, Cleveland, Hoboken, Cincinnati, Rochester, Buffalo, Newark, Washington, Portland, New Rochelle, San Francisco, and Los Angeles. This society seeks to redress without cost the legal wrongs to the poor, and in New York alone it handles about thirty thousand cases and recovers from the oppressors of the poor nearly \$100,000 annually. It has the seed of a state activity, and even now free legal advice for the people is being agitated by certain bar associations.

The obvious altruism of organizations like this in our democracy indicates a spirit of mutual helpfulness in the hearts of the people, which makes it seem

<sup>1</sup> See "Some Ethical Gains through Legislation," by Florence Kelley. Published by Macmillan.

queer that with all our local charitable organizations spending millions to help the needy, the Salvation Army is almost the only organization with a national scope which makes it a business to look after the poor. For our poverty is interstate, as much as our commerce, and until it is handled with a national spirit and studied from the broad national outlook, its causes will not be thoroughly understood. So while the Salvation Army spends annually nearly a million dollars upon the nation's poor, feeding three hundred thousand of them at Christmas dinners, furnishing daily work for over one thousand, and supplying during a year over two million beds, and supporting one hundred industrial homes, wood yards, and employment stores and twenty-one rescue homes, still this is but a fraction of the work needed. The establishment of the Pittsburg Foundation for the study of the social and economic condition of the wage-earning classes probably marks the beginning of a deeper and saner interest in our national poverty, and its causes and possible cures, than we have had before. For our sense of national charity must awaken and have a being as definite as any other organ of our national spirit. The Pittsburg Foundation at least has done this: it has shown that we have a national system — an American system — of

dealing with labor. That system makes labor bear the charges of breakage and wreckage and wear and tear in labor. But when once the American people understand that this system is peculiar to us, that other nations compel the different trades to bear the expense of wear and tear and breakage of men as they bear the wear and tear and breakage of machinery, our system will change; the employers' liability will be legally established, and the mockery of damage suits in federal courts by maimed employees against their negligent employers will cease; the doctrine of the assumed risk of the laborer in any trade will vanish; and at least one fruitful source of poverty — the maintenance of the crippled — will disappear. Those in charge of the Pittsburg survey now seem to think that the city "is the only thing big enough to counter-balance organized industry, and make life sane and normal and beautiful." But perhaps when the national government feels the impulse of the people who have been enlightened by the saddest facts in all our statistics, the nation may leave the city less to do than they think who see the situation to-day.<sup>1</sup>

It is reasonable to believe that this century may

<sup>1</sup> The efforts of Mrs. Russell Sage, Mr. Carnegie, and Mr. Rockefeller to inquire into poverty scientifically and from a national viewpoint seem to indicate that some sense of our economic and social status is permeating the nation.

see an improvement in the condition of the weak and defenseless in our industrial system which the last century saw in the care of the mentally and morally and physically infirm and helpless. The state has advanced so far in its care of insane, of deaf and blind, of the morally imperfect, that millions of dollars are spent upon these unfortunate people. The best thought of the best scientists of the nation is given them freely and willingly, and no tax upon the people is so gratefully paid as that which goes to make existence easier for our feebler kin. And improvement is moving so rapidly that we who do not watch it scarcely realize that the state separates its insane into groups, that it generally paroles its first offending criminals, that it allows no children in jail, that it has all but stopped prison horrors, and that the punitive spirit is passing from all of our legal institutions. Says Secretary Alexander Johnson of the National Conference of Charities and Corrections: "You may fairly state that on the whole there is a trend toward good business administration (of our prisons and charitable institutions) with the elimination of partisanship." The people are getting what they ask for. The private neglect of ages and public abuses of the middle years of the last century are giving way to the expression of the

public sympathy and generous care. And what the people feel for the helpless they will feel for those who are ground to helplessness in our industrial life. The altruism of our national character as citizens of a democracy may find a way to do what economists and legal doctrinaires have not been able to accomplish. The service pension system and general welfare work for the employés is coming into our railroads as a voluntary establishment so rapidly that its legalization will hardly mark a practical advance when it comes. Within five years the service pension has come to the railroad employés on systems aggregating nearly one fifth of the mileage of the United States, and welfare work is now done for the employés of practically every American railroad.

An admirable (because it is in a sense typical) instance of what great aggregations of capital are doing for their employés is found in the situation indicated by the remarks of Mr. George B. Cortelyou at the tenth annual meeting of the National Civic Federation in November, 1909. He said in part, speaking of the Consolidated Gas Company of New York, of which he is president: "The Company manifests interest in its employees in three ways: first, by assisting them in maintaining an employees' Aid Society; second, by providing annuities for

superannuated employees; third, by making allowances for vacations and sickness. The Company maintains for its employees what is called a Mortuary Fund. Each member pays fifty cents per month, and at death his beneficiaries receive the sum of \$300. Towards this fund the Company contributes one half of the amount paid in by the employees as dues. Upon leaving the service of the Company the employee receives back all that he has paid into this fund, without interest.

“Also there is maintained a Friendly Aid Fund for the benefit of the employees. Into this fund each employee pays thirty cents per month, or \$3.60 a year. For this amount the member is entitled during sickness or disability to \$6 each week for twelve weeks in any one year. The Company also contributes one half of the amount paid in by the employees as dues, and also pays the salaries, expenses, and medicines of the physicians who attend the sick members of this society. Upon leaving the service of the Company the employee receives back the amount paid into the fund without interest, less the amount he may have received for such benefits. Membership in both of these organizations is wholly voluntary. In addition to the foregoing, both of these funds have become possessed of a surplus



cash balance, which is invested with the Company temporarily, and on which the Company obligates itself to pay five per cent interest.

“Employees who give thirty-five years of service are, if incapacitated for further work, entitled, at the discretion of the Company, to be placed on the superannuated list. The usual course is to compute the allowance made at one per cent for each year of service, based on the average pay for the five years preceding retirement. For example: An employee has been forty years in service and has received during the past five years an amount of \$20 per week. If upon examination by the Company’s physician he is found to be incapacitated for further service, the Treasurer makes recommendation, based on the application of the Superintendent of the Department in which the employee has been working, that he be placed upon the Superannuation List at forty per cent of the \$20, equal to \$8 per week, which amount is paid by check on the first day of each month. The beneficiary can live wherever he pleases and is not required to report to the Company other than by the receipt for the checks sent. The Company pursues a liberal policy in the matter of vacations for absence on account of sickness.

“The ordinary plan of relief in case of sickness

or disability other than by accident is this: one month of full pay or two months of half pay is allowed for each five years of service. For example, an employee who has been twenty-five years in the service of the Company and is taken sick is examined by the Company's physician and report made to the Treasurer. Upon that report an allowance of sick benefit is given him from time to time to provide full pay (counting in the \$6 per week from the Friendly Aid Society) for five months, or half pay for ten months. At the end of the five or ten months a new examination is made, and if the employee is still disabled, either a special additional allowance is made, or he is dropped from the rolls. In disability from accident each case is carefully considered by the proper officers and action taken based upon the circumstances. It is the policy of the Company to deal generously with its employees."

Here we see the socialization of capital itself. The democratic movement is by no means — or even largely — confined to the poor. Neither is capital the property of the rich. Capital is the savings of all classes; democracy is the altruism of all classes, and even in capital itself we find the abnegation of democracy. Moreover, capital is finding that altruism pays; the service pension is a good

thing for capital. And in the industries experience has proved that the service pension and the welfare work pay — and that guarantees their adoption. When the economic value of kindness is demonstrated, the instinct of democracy to help the needy will have no political opposition.

A generation ago when the college curriculum began to broaden and the laboratory began to take an important place in college life, educated men bewailed the material spirit of our education. There was a movement to force education back to the humanities, back to culture, back to "the sweet serenity of books." But now the laboratory is returning to the democracy that founded it, the service that is due. Our scientific societies are almost purely altruistic. The health and well-being of the masses is engaging scientists all over the nation. A score of scientific societies, state and national, have as their reason of being some improvement in our public life. The Society for the Prevention of Tuberculosis is doing effective work in Washington, Oregon, California, North Dakota, South Dakota, Minnesota, Kansas, Nebraska, Texas, Oklahoma, Arkansas, Louisiana, Alabama, Florida, Tennessee, Missouri, Illinois, Pennsylvania, Rhode Island, Connecticut, Maine, and West Virginia, where effective campaigns for state appropriations to stop the

spread of the disease are waging. Appropriations of over \$4,000,000 for the suppression of consumption have been made by twenty-eight state legislatures in session during the year 1909, as the direct result of work done by the National Association for the Study and Prevention of Tuberculosis.

In 1909, forty-three state and territorial legislatures were in session. Of this number twenty-eight passed sixty-four laws pertaining to tuberculosis; eight others considered such legislation, and in only seven states no measures about consumption were presented.

Of the sixty-four laws passed, fourteen were in reference to building new state institutions. New state sanatoria for tuberculosis will be built in Pennsylvania, Connecticut, where three will be erected, Arkansas, Oregon, South Dakota, North Dakota, and Florida. In New York, North Carolina, Indiana, Massachusetts, New Hampshire, and Maine, appropriations have been made for enlarging sanatoria already being built or in operation. There are now twenty-seven states where such institutions have been established. Every state east of the Mississippi, except Illinois, West Virginia, Kentucky, Tennessee, South Carolina, and Mississippi have provided hospitals for tuberculosis patients.

Five states, Illinois, New York, Ohio, Minnesota, and Iowa, passed laws giving their county officers power to erect tuberculosis sanatoria without resorting to a special vote. In Maine, Connecticut, Rhode Island, New Jersey, Michigan, Iowa, and Kansas laws providing for the strict reporting and registration of tuberculosis were passed. Only five other states, including the District of Columbia, have such laws. The National Association considers laws of this character as the first requisite in an organized movement against tuberculosis.

Ten states have this year granted nearly \$100,000 to be spent only for the education of the public about tuberculosis. During the past year fully one third of the \$4,000,000 appropriated this year is by special legislation and for new work. The last Congress appropriated, in addition to this sum, nearly \$1,000,000 for the maintenance of the three federal sanatoria in New Mexico and Colorado. It is estimated besides that the numerous county and municipal appropriations made or to be made for tuberculosis work for next year will aggregate at least \$3,000,000, making the official public expenditures in the United States for the wiping out of tuberculosis at least \$8,000,000.

And all this practical manifestation of altruism,

the large unselfishness, good will, or whatever it may be called, comes from the energies of less than a thousand active men and women largely from college laboratories devoting not money but personal service — their very lives to this good work. Ten million in gift money would not have achieved so much. "The sweet serenity of books" never has done so much for this world in so short a time.

From the other end of the college campus, the students of economics are coming into public life and one group of them has formed and is maintaining the National Tax Association, the Economic Association, and the American Academy of Political and Social Science, which hold national conferences and are gathering most valuable data and forming most important conclusions in economics and sociology. The future work of these and similar associations will be inestimable. But it is altogether unselfish. There is not a dollar in it for any one. Like all of the great American democratic movements the study of economics is for the good of the many at the sacrifice of the few. And it is but one of a score of the activities of men from the broader college and greater university which democracy is establishing all over the land, by local taxes or private gifts.

The organization known as "The Joint Committee

on Conservation" furnishes an admirable illustration of what organized good will can do. The joint committee was organized in the spring of 1908 at a conference of governors called at the White House by President Roosevelt. Since that time official state conservation commissions have been appointed by the governors of forty states, and conservation committees have been named by fifty of the big national organizations of the country. There was a second conference of governors and presidents of national organizations, and there is now a North American Conservation Conference, consisting of commissioners from Canada, Mexico, and the United States. Moreover plans are well under way for a World Conservation Congress to be held at The Hague. This has all grown from the unselfish work of less than one hundred men, mostly college men originally, devoted to the cause of saving our forests and mines and rivers. They have spent little money, but they have given the best service that trained minds and tireless bodies could give.

We have seen in passing but a few of the hundreds of activities of the Americans as they are organized for mutual help. But these activities are so many, and the organizations so widespread that scarcely a citizen escapes them. Whatever his inspiration to aid his

fellow may be, he finds it organized, and in some organization he finds outlet for the desire to help, to be of use in the world, to satisfy his soul by service. And so these societies and associations and conferences and conventions and assemblies do threefold duty. First they express public sentiment after the parliamentary fashion of the old Aryan, who moved after "the most ancient ways" in due form and order. Again they develop in Americans the self-sacrifice and self-control and high altruism that is necessary for a permanent democracy. And finally they also unify the nation. For these organizations are national, and men of all sections meet one another and work for the common good, as Americans, knowing no section, caste, or special interest. But most of all these societies and organizations help the man who helps. It was the Samaritan rather than he who fell among thieves who was benefited by the kindness on the Jericho road. And so we, who by the millions are manning these societies for the betterment of our kind, are helping ourselves more, perhaps, than those we would help. The just sympathy strike may help the sympathizer, make him bigger, manlier, nobler, even though it does not help the first striker. Likewise, thousands of men are helping their souls as they help others fight tuberculosis in their bodies. And so with



all our reforming of conditions about us, by the millions and millions we are first of all reforming ourselves. We are promoting democracy by forgetting ourselves in the thought of others. This self-abnegation is the greatest movement in our national life. And at bottom all this desire to heal our souls is but the prick of the national conscience. The movement in our national politics toward the more equitable distribution of our common wealth is from the Puritan's conscience. It is not solely, perhaps not even chiefly, from those who are wronged, it is from all classes. The conscience of the people knows no class. And until the conscience is satisfied desire for reform will not abate. This movement for equity — for democracy in our national life — is not a craze. The reform movement is a deep tendency of our life; it is our mysterious link with the infinite body of humanity — the body in which, through some strange spiritual alchemy, the good of one is the good of all. The Divine leaven in a sordid generation, which in the end shall leaven the whole lump, is our national inheritance through the home, from the mother of our own blood, brought to this continent as equal and partner through great suffering and sacrifice to make a nation. This social leaven in so much as it is instinctive and emotional is feminine; in that it is

dominant and masterful it is bred of men. But whatever this conscience of democracy is, it is binding us into a closer national union than we have known before, making us one blood in our common aspiration. And thus a race is renewing itself.

## CHAPTER VII

### THE SCHOOLS THE MAINSPRING OF DEMOCRACY

THERE is grave danger that the advocate of fundamental democracy will make a fetish of it. Seeing what the secret ballot will do, what the direct primary will do, what the purging of the party system will do, what direct legislation will do, and what all the state commissions and city charters and parliamentary organizations propagating the altruistic second self of the nation will do, the man who observes these signs and wonders of this latter day is liable to forget what the sound, strong, righteous sense of the citizenship that made all these signs and wonders will do — may do even without these things. The protagonist in the drama of democracy often is blinded by the limelight of his own cause. He finds it hard to realize that free institutions do not make free men, but that free men make free institutions. The truth lies some place between Hamilton and Jefferson, the strict Republican and the uncompromising Democrat. And probably Hamilton would have stated the truth when he wrote that “the general genius of a government is all that

can be substantially relied upon for permanent effects," if he had written instead, "the general genius" of a people, for government, "is all that can be relied upon substantially for permanent effects."

And in this American nation if the student of the times would go to the bottom of our institutions, he would find that we have changed and are changing the form and constitution of our state and national institutions. He would find that despite the federal Constitution we are electing our Presidents by a direct vote, and more than half of our United States senators by a direct vote, thus bringing our federal courts nearer to the populace. He would further find that we are turning our state affairs over to commissions of experts and our city affairs over to direct representatives with great power and often under the recall. And yet in the face of these changes the student of the times would find that we are conducting the public schools after the ancient ways. In the United States we spend nearly a half billion dollars every year for schools — mostly in direct taxes. And those direct taxes are levied by men elected by a direct vote of the people. It is primitive folk-rule; yet the sum we raise thus is the largest single item in the tax budget, direct or indirect, that we raise under the government. Moreover, it is the only fund

in our system of government that is so carefully watched that dishonesty and extravagance do not waste it materially. The strongest instinct of this nation — one might almost call it an obsession — is the instinct for education. So as a people we have kept the common schools separate from the other branches of our various governments. Anarchy might wipe out our federal government, and in the disorder the state institutions might suspend; even the cities and counties might be paralyzed in the calamity. But in all the political upheaval the machinery of our public schools would not be affected seriously. The \$475,000,000 school tax would be collected, the half million school-teachers would go to work every morning, and the eighteen million students would keep on preparing themselves to resist whatever tyranny and oppression and injustice the political cataclysm about them might produce. The framers of the Constitution, with all their fine system of checks and balances, clearly overlooked the mainspring of the whole mechanism of democracy, and left it unhampered. It is practically the only political institution which is not in some way subject to more or less complex control and interference by the state or the Nation. And slowly as the people have grown in intellectual strength, they have removed

the checks and balances put upon the democratic majorities in all wisdom by the fathers. It is absurd to say that when the schools have made men worthier than they were and than they are, safely to handle larger affairs, men will not find a simple way to reach the larger affairs. Constitutions are not amended by wars — monarchies and kings are curbed by wars. Constitutions are amended by the moral and intellectual growth of the people living under them.

Therefore it will be well for one who desires to see the wheels of the American government go 'round, to look at the power that makes them go. "The American people," says President Butler, of Columbia University, "are almost Socratic in their acceptance of the principle that knowledge will lead to right and useful action; and if the formula be not pressed too far, the American conviction as to education is quite defensible."<sup>1</sup> At least it will not be pressing the formula too far to maintain that if education produces the power that makes the demagogue, it also makes the common sense of the people who soon grow weary of him. Therefrom we may argue that whatever substantial growth there has been in our institutions, — and one must admit that they have grown, — this

<sup>1</sup>"The American as He Is," p. 68, by Nicholas Murray Butler. Published by Macmillan.

growth has come because the people have broadened their moral vision by reason of their widening information. Schools have disseminated knowledge. Knowledge directed the normally uneasy Puritan conscience, and the people have grown powerful in so far as they have grown just. Thus the net income from our annual investment of half a billion dollars in education may be reckoned in terms of justice. So let us go to the account, and look at the books. To begin let us consider the gross liabilities: There are twenty-four millions of students, who according to the school census of 1907 are of school age (that is, between five and twenty-one) and should be in school, using an educational plant valued at one and a half billions of dollars. The report of the Commissioner of Education for 1907 (p. 524) indicates that only eighteen millions of them are enrolled in school, sixteen millions of them (p. 544) being enrolled in the common schools, with an average daily attendance of nearly twelve millions. But that gross liability is overstated. For in the shrinkage between the total population from five to twenty-one years old, and the total school enrollment, there are the Southern negroes whose education is largely unprovided for, and there are the children under eight years old who often are kept from school by their parents. So that with our great plant, worth

over a billion, and with our four hundred and seventy-five million dollar annual outgo, we are reaching probably considerably more than three-fourths of the number of actual school children from six to eighteen years old for whom the taxes were levied. This does not mean that one-fourth of our people are illiterate. But it does mean that for some reason one-fourth of them are not getting an equipment for citizenship that they should get, and that the taxpayers should provide for them. Yet there can be no doubt that our schools are crowded and that every child is in school for whom we have provided desk room and teachers. But there seems to be no doubt also that we should provide more desk room and either more teachers or better paid teachers to attract and hold the children who leave school in their early teens. Nor is this all. Though education is practically free in America, and as the opportunity to earn one's way through college is wide, it is astonishing to note from the report just referred to (p. 525) that only 3,000 persons annually receive post-graduate degrees from our colleges and free universities, and that only 25,000 of the twenty-four million available students annually complete the four years' college course. And now let Gradgrind gorge himself with facts: Assuming that the average life of the college graduate and his post-graduate as-



sociate is thirty years out of college, we may assume that the generation now opening will be manned with a million men and women who have at least finished their college work. Assuming that the same number of juniors, sophomores, and freshmen leave school annually—about 25,000 in each class—that are graduated annually, we may add three million more to the total, making four million college men and women who will participate in our national life during the first thirty years of this century. Add to these four million college-bred men and women the one hundred and sixty thousand high school graduates who the report above mentioned says (p. 525) are entering life every year, and the present generation may reasonably be computed to hold five million persons who have taken full advantage of the common schools supported by direct taxes upon all of the people. Add to this total those who annually drop out from the four lower classes of the high school—a list as large from each class as the annual graduating class—and one has fifteen million others who have come into a somewhat wider field of knowledge than that afforded by the grade schools. Let us add to them for thirty years the three-quarters of a million pupils who, according to the report (p. 525) complete the work in the seventh or eighth grades of the elementary schools.

There will be 22,500,000 of them. Now adding all these sums — allowing for the increase in population to increase the number of youths as the years go on — and we have about fifty million Americans who have remained in school into the midst of their teens — something like two-fifths of our probable population in the next thirty years. This is not enough. Democracy may live, but it cannot thrive upon that basis. If we are to solve the problem of the century — the restriction of ignorance and greed in our business organization — we must solve it in the schoolhouse rather than in the legislature or in the courtroom. So long as there is a body of the people ignorant, that ignorance will breed a greed that will be duped by demagogy, and the greed equipped by cunning always will outwit greed equipped by ignorance. The problems that this nation has solved have been for the most part simple problems. They were problems in production of wealth. It is true that the abolition of slavery concerned the distribution of wealth. It required only simple subtraction. But to deal justly with capital in its public uses, to say what is the individual's share in the public partnership and what is the share of the commonwealth — that is long division. As a nation, at least, we must get into the eighth grade. Perhaps the average now is nearer the sixth than the eighth.

And so there comes into the life of too large a per cent of our boys and girls four or five waste years — the years between thirteen and eighteen. These waste years hold in them the real dangers of our democracy. For out of school the boy at least is worthless. Says Charles S. Morse, executive officer of the Massachusetts Commission on Industrial Education: "If the boy goes out to attempt to learn a trade at fourteen years of age, the manufacturer says, 'I do not want you in my factory,' and the manufacturer will not employ the boy except as an errand boy. You ask me how I know this. Agents of the Massachusetts Commission on Industrial Education canvassed the state recently, interviewing some 1000 men who employed thousand upon thousands of men, and there were only a few who did not say: 'We do not want the fourteen-year-old boy; he is in our way. He gets on our nerves.'"

And yet two or three millions of fourteen-year-old boys and their sisters — who are really worth something — are out of school in America to-day. They are out partly for economic reasons, the family needs their support; but the state needs a clear mind in the ballot booth seven years later worse than the family needs support, and the state might well afford to pay the family the errand boy's meager wages. But apart

from economic forces which keep the boy out of school during the waste years of his life, there are social reasons why he is not in school. And those social reasons are his studies and his teachers, and at the bottom of all is the selfishness of the taxpayers.

For when a child is not "doing well" in school, the parents find it easy to put him to work outside. And thus of the fifteen millions of children who according to the report above mentioned leave school before they complete the high school course, probably five millions leave not because they have to leave to support the family, but because the parents feel that the boys at least are better off working out of school than idling and wrangling with their teachers in school. Generally speaking, the fault is with the school rather than with the boy. Certainly the fact that five million boys in their early teens do leave school unnecessarily is a fact worth considering in making up a curriculum. And if the fads and isms are driving the boy from school, the nation is the loser. Therefore the instinct of the boy for physical education as well as for mental training should be heeded. The boy longs for manly things. He craves the company of men and the roughness of men. He desires to do something — to see something growing under his hand. It is instinctive, and the most hopeful thing in our

democracy is not the growth of the secret ballot, the cleansed party, the direct nomination and direct legislation, but the vague and definitely growing recognition that the boy's instinct for practical education in his school is to be trusted. The almost universal introduction of manual training in some form into the lower grades of American schools — giving the boy opportunity to work with his hands — is one of the most important symptoms of health in our political organization. The extent of the growth of manual training in the country is surprising. Within ten years — coincident with the other big democratic movements — manual training has spread to the schools of almost every American state.

Typically manual training begins in the sixth grade, when the pupils are coming into their teens. It continues through the eighth grade, and there in the larger of our American cities manual training is diverted into a separate building from the regular high school building. This is known as the manual training school. There boys are taught to use their hands in woodwork, stonework, brickwork, ironwork, clay work of various kinds, and girls are taught domestic science. But these schools must not be confused with the great trades schools that are being established in the cities of the land and in the manufactur-

ing districts. The manual training schools do not teach the boys trades; they merely teach them to use their hands, so that when they go into trades they will learn easily. The trade schools make them apprentices, and these trade schools are found now in every important American city and in every state, either under the name of technical institutes, agricultural schools, or trade schools. This chain of public schools teaching rough hard work is keeping American boys in school, and is doing more to educate them for citizenship than any other force in the country. As the higher mechanical schools fit into the school system are they most valuable as citizen makers.

It is remarkable how universally this manual training in the grades has come into our educational system. In 1908 in addition to manual training in the grades Virginia had manual departments in twenty-five high schools. North Dakota had ten manual training high schools, and three cities in North Carolina had adopted manual training throughout the course; in Indiana forty towns and cities had manual work in the grades with ten manual training high schools. Massachusetts taught manual work in sixty towns and had twenty-three manual high schools. Manual work was taught in ten schools. In the state of Washington four cities taught manual training in the

grades and seven had manual high schools; in Wyoming there were four manual high schools and three graded schools giving the manual work; and in Maryland it was introduced into thirty-five high schools and three graded schools. South Dakota has three manual training high schools, and Minnesota gave manual training work in ninety-eight schools — many of which were separate manual training high schools. Vermont taught manual training in the grades in seven towns and Tennessee in five towns. In Ohio the State Superintendent of Schools says that manual training is taught in all the towns and cities and that there are many manual high schools. Arkansas had three manual high schools; Florida, five; Kentucky, one; Nebraska, three; New York, five; Missouri, three; Michigan, ten; and Georgia, twenty-two, and it is taught more or less in the grades of all these states, as well as in Wisconsin and South Carolina. For a new movement in education — one which increases interest in school for pupils at the age when their absence from school makes for economic and social waste — this tendency is too strong in America to be overlooked by any student of our government. For the introduction of manual training work in schools means two important things to the boys — work that they like and

teachers that they like. Boys need men when the boys are in their teens, and the prevalence of women teachers in the sixth, seventh, and eighth grades and in the high school has driven more boys from school, and made bad citizens to make bad government, than we realize. Of course these manual teachers cost money, they make schools more expensive; but according to the report of the United States Commissioner of Education the increased cost of maintenance in the seventh and eighth grades has been met by an increase in attendance. All of the desks are full to-day and millions of boys are out of school who should be in school and who would be in school if the schools gave these boys desk room and rough work with their hands. But those things cost money. It seems to be largely a question of how good a citizenship we are willing to pay for. As it stands, our thrift is overreaching itself. We are cheating ourselves.

And here we come to the problem of the boy and his teacher. The boy goes to the pool hall and the saloon primarily because there he finds men. At school he is surfeited with femininity. Given men teachers for the boy after he gets into his teens, and the boy will not be so ready to leave school as he is. But teaching is a profession that men use as a stepping-stone to something better. It is not a



man's profession, and wages of teachers are so low that men cannot afford to make teaching a career. If the statistics of the census bureau are correct, no extravagance of our people is so disastrous to us as the economy we are practicing in our schools in the seventh and eighth grades. For there the boys fall out by the millions. And the fact that their sisters, who can earn as much at that age as their brothers earn, remain on an average a few years longer, indicates that the boys leave school because they are boys, and because the schools are designed for the girls. In some hazy, indefinite way we seem to be realizing this as a people; for in ten states — Massachusetts, Utah, Indiana, Virginia, New Jersey, Illinois, Maryland, Ohio, California, and Michigan — we have passed laws of more or less value providing for pensioning school-teachers. Given a pension, and a man can afford to make teaching a profession, and the man teacher will appear in the seventh and eighth grades, and the boy will be saved to good citizenship. If the laws permitting school districts to set aside pension funds spread over the states as the laws authorizing manual training schools have spread since 1900, by 1920 the million pupils who reach the high school every year will be greatly increased if there is any grounds for prophecy in statistics. For

teachers' pensions are now being agitated, according to letters from state school superintendents in Washington, Connecticut, South Dakota, Vermont, Florida, Kentucky, Wisconsin, and New York — where a better law is demanded. And the feeling of the people that more liberal school expenditures will bring a broadened interest in the state and in more rigid popular control of the state affairs by the people is met by instinctive opposition from the politicians. For in New York discussing the proposed teachers' pension law a machine politician in the state senate declared within a year in a public interview that he would introduce an amendment to the constitution prohibiting the state or any of its subdivisions from creating a pension service for any public employés except policemen and firemen. Here we have a squarely drawn battle between democracy and the aristocracy of politics for the retention of special privileges or the extension of democracy.

But this crime of the waste years between twelve and eighteen when American children leave school is more than a social crime against the ballot box — it is economic. In the *Annals of the American Academy of Political and Social Science* for January, 1909 (p. 54), we find an investigator writing: "The efficiency of the German workman, due to continua-

tion schools, has increased to such an extent that German investigators feel warranted in considering American competition negligible. These same German investigators declare that the efficiency of the American workman has decreased in the last ten years. Our own American consul general to Berlin, considering the reports of these German investigators, writes in a formal report to this government: "Reduced to its simplest terms these investigators generally conclude that reliance on a general more or less superficial education, together with natural adaptability to fit young men for every walk of life and the lack of specialized study in physical science, modern language, and the industrial arts, will, if persisted in, neutralize much of the advantage which our country now enjoys."

The answer of the New York reactionary state senator speaking for capital would probably be to increase the tariff. But the answer of democracy would be to pension the school-teacher, and by getting higher grade teachers, keep our boys in school, learning to use their hands and their minds, that they may be good citizens and row their weight in the economic boat of the world's industry. If there is anything in education as the mainspring of civic virtue, the educational problem of democracy is: to

stop the waste of the first years of adolescence in America, that the trained conscience of the people in maturity may find its way into the ballot box. For while it is true that learning and wisdom in individual cases do not always go together, still the fact seems to be fairly well established that in the particular blend of the various strains of Aryan blood now inhabiting the American continent, education of the mass does direct the conscience of the people toward wisdom, and does turn their hearts to that common sense of conduct known as righteousness.

Take, for instance, Massachusetts. The Report of the National Commissioner of Education for 1907 warrants some most interesting conclusion about education and political progress. The Report indicates by Table 7 that the daily attendance in Massachusetts is larger than in any other state, and (Table 8) that the average number of days' attendance a year is larger than in any other state, and hence that (Table 20) the 33.2 cents per hundred dollars of true valuation of all real and personal property expended for school purposes annually brings the greatest efficiency in educational result. The Report indicates that Massachusetts sends more of her children more days in the year to higher grade schools than any other American state. Is it therefore fair

to ask what does the state get out of it? How does the school serve a progressive, sane democracy? A monograph of the American Academy of Social and Political Science is devoted to Massachusetts labor legislation, and finds it on the whole the wisest labor legislation in the United States. In railroad legislation Massachusetts has adopted as a matter of course provisions for state ownership of railroads as a penalty for oppression, and while her commission has no rate-making power, it has information upon which to base rate suggestions, and that information collected under the law is so complete and so categorical in its nature that a rate suggestion from a Massachusetts commission, backed by the power of railroad ownership, has all the teeth necessary to keep rate encroachments at a respectful distance. The commonwealth has led all the other states in providing a good substitute for old-age pensions for its citizens. It regulates its public utilities with rigorous justice, and its banking laws are models for other states. Moreover, without primaries and without legal aids to secure representative government, other than the most radically nonpartisan ballot law in the United States, Massachusetts has maintained in the United States Senate representative men who by sheer intellectual force have domi-

nated that body with the Massachusetts idea and have made — whether for good or ill — the Massachusetts idea a power in this nation far beyond the warrant of either the wealth, the population, or the geographical area of the commonwealth. And finally with all her progress — and one who examines the laws and the enforcement of laws of the several states, and examines them carefully, must admit that upon the whole Massachusetts is our most progressive commonwealth — with all her progress the federal courts only were invoked once during the two years from 1907 to 1909 to set aside the enforcement of any Massachusetts law.

And that brings us into the midst of the whole matter of this American democracy. Massachusetts seems to show us that the basis of real progress is in the schoolhouse, and the experience of other states with a less efficient school system proves beyond a doubt that the limits of progress are found in the restrictions put upon progress by the courts — for the most part restrictions of the federal courts.

The status of the courts will be considered in another chapter. But it is obvious that they mark the bound beyond which democracy at any given time may not trespass. The bounds marked by the courts are changing. They are not the same yester-

day, to-day, and forever. And even though the constitution is not formally amended, its interpretation changes as the people grow intellectually. The fundamental law of yesterday is not the fundamental law of to-day, nor is the fundamental law of the land to-day to be the fundamental law tomorrow. The constitution is amended by interpretation more than by formal amendment, and the amendments by interpretation are made by the courts as a result of a most inexorable law of human nature. Men take the color of their times. And courts are men. So when the times change, when the sentiment of the people becomes fixed, courts bend the constitution to the people.

Therefore conditions in Massachusetts prove that the first obligation upon those who would change the trend of our American democracy from the worship of property rights to a consideration of the proper relation of property rights to the rights of men should not be to change laws and reform the courts; the first obligation of reformers should be to go to the bottom and make men and women who can think and feel and act justly and unselfishly. The mainspring of democracy is in the schools. The high schools, the colleges, and the universities train between one third and two fifths of our people.

But the masses are from the grades at or under the sixth grade. Fortunately this sixth-grade mass of our population changes with the generations, and the educated man or woman is found in almost every family. There are no family lines of intellectual cleavage. And the leadership of the best trained minds and hearts is rarely if ever lost to either side in any political contest, although always intelligent leadership is more or less hampered. And often the compromises which wisdom must make with honest ignorance play into the hands of those whom both are opposing. The demagogue and his followers are after all the chief agents of reaction. Yet the demagogue in the fool's school of experience is merely teaching the masses at a terrible cost what they should have learned during the waste years between the time when they left school in their early teens and the time when they began to live in their own right economically, socially, and politically in their twenties.

Moreover, if by any turn of the treacherous kaleidoscope of politics some issue should put the interests of a majority of the uninformed, unschooled, untrained, well-meaning three fifths of our population upon one side of a question of vital importance and their better trained fellows upon the other side,



the price paid to the master of the fool's school might be the disruption of the Republic. It is inconceivable how such a thing could occur. For through books and newspapers and the scores of other educational agencies of the land the common education of the people is advancing, even after they leave the schoolhouse. Indeed, in farming and storekeeping and in many of the outdoor trades which require alert minds to pass quick, sure judgments upon a score of matters daily, there is no arrested mental development. The mind of men and women in these vocations grows through adolescence until maturity, and the newspaper and the public library finish the work of the schools for millions of people. But there remain other millions, bound to machines, working automatically, for long hours and of necessity at small wages (because the grade of intelligence required for the work is low), and these millions taken from school at the end of infancy, should they ever unite in politics, would visit upon this nation a terrible vengeance for its criminal neglect of their cause. They are skeletons in our national closet. Our inhumanity to them is our national sin; for which we must suffer if we do not change our ways.

“It is practically impossible to find a community

in the United States," says Nathan C. Schaeffer, state superintendent of Pennsylvania, writing in the discussion of taxation as related to public education, published by the National Educational Association, "that does not spend more money for whisky and tobacco than for education." The Report of the United States Commissioner of Education, 1907, indicates (p. 525) that there are only twice as many school-teachers as there are bartenders in the country. So while the aggregate amount spent for schools is large, the comparative amount is small. A few states, notably Ohio, make provision for the reimbursement of parents for the time of children in school. And eventually all the states must come to that plan. For the pittance that the child can earn is so little compared with the need of the state for that child's judgment formed by a trained mind in making public sentiment when he is grown, that it is folly to haggle over the expense account.

If democracy is to go forward, it must begin to move in the schools of the country. Now as a people we can move quickly when we desire to move quickly. Within ten years there has been a complete change in the American mind about the treatment of defective children. We have stopped putting children in jail; the juvenile court has come into the judicial

system of practically every American state. We do not count its cost, because we see its justice. The enlightened selfishness of the American people makes them regard investments in playgrounds, children's camps, recreation places on docks and piers, boys' farms and similar institutions for children, as profitable investments. And the enlightened selfishness of the people — their public altruism — must be awakened to the fact that the waste years of early adolescence of our American children constitute the greatest menace to the perpetuity of our institutions. The waste of those years is undemocratic. It is due to public selfishness. If the child leaves school for social reasons, that is because he does not feel that the school interests him, it is demonstrable that better schools — higher priced teachers, teaching the rough, practical things which early adolescence instinctively longs for — will hold him. But that requires men teachers, and to hold men of the right sort teaching must be made a career; and for that pensions for teachers seem to be necessary unless salaries are greatly increased. (Parenthetically it might be said that there is no reason why citizens as adults should not pay the taxes required to pension the teacher who worked too cheaply to teach them as children.) If, on the other hand, the

child is compelled to leave school because his parents cannot afford to keep him in school, — for economic reasons, in short, — then the public, having need of the child's adult judgment in the state, should reimburse the parents for their loss of the child's miserable wages, and so keep the child in school.

Laws will not make us a free people; presidents and governors will not make us free; courts will not make us free. "Ye shall know the truth, and the truth shall make you free." And if the "general genius of a government" — which Hamilton says is "all that can be substantially relied upon for permanent effects" — does not give the people the truth, the people must remain in bondage. The upper grades of our common schools and our high schools and our colleges and universities are turning out millions of men and women who are giving their lives to society unselfishly as teachers and preachers and farmers and doctors and lawyers and mechanics and merchants, whose chief thought is not for money. These men and women form the bulk of the well-housed, well-clad, well-fed, prosperous body of the democracy, neither rich nor poor. But occasionally there rises in a town, a state, or a nation some ignorant, selfish, crafty, brutal human vulture, fat with prey of capital taken within the law, and greedy for

more. He debauches legislatures; he blinds the courts, and controls executives. The public sentiment of educated people does not check him, as it sometimes checks the greedy man from the college. He is crass, vicious, and unrestrained. Yet he is our own child. He and the criminal of the slums are brothers. Society has made both slums—the ignorant slum of the rich man and the ignorant slum of the poor man. For it has denied them both the truth that would make them free. And we must all suffer for our sin to them. For all our new machinery of democracy, our secret ballot, our party system, slowly purifying itself, our primary nominations, our direct legislation, will avail us little against these two men of the slums. Together one in industry, and the other in crime, sometimes allied, and never far apart, these men, like jungle beasts, live upon the flesh and blood of the children. Into their lairs, either as plunder of wages or prey of crime, go the waste years of adolescence in this country. Yet they—these social outlaws—are but the incarnation of our national greed. They speak for democracy, too; they are a part of democracy; they are products of democracy. This is their government as well as the government of the middle classes. They and all the evils in their train—

crime, poverty, injustice, suffering — are signs of our bondage to ignorance and greed. It is a bondage self-imposed. For at our own hands, unchecked by courts or by federal laws or by state statutes, lies the school system of the people.

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## CHAPTER VIII THE COURTS THE CHECKS OF DEMOCRACY

IN these closing years of the first decade of the twentieth century, there are in the United States ninety millions of us — mostly Aryans. Some of us are Latin Aryans from the south of Europe; a few of us are Slavic Aryans from the north of Europe; a distinguishable strain of our blood is Norseman Aryan, from the west of Europe, and many of us are Celtic Aryans, cropping out of any of half a dozen other Aryan breeds; but the dominant blood is the Teutonic blood of the Angles and the Jute and the Saxons, — the blood that absorbed the Latins, and the Celts, and the Normans, who came to the British Isle as conquerors in battle, and lost in the struggle of the blood. For here in the United States we have two things which have made the Teuton strong in this earth: the home with the mother never out of caste, and the rule of the folk by the "most ancient ways" — the supremacy of the majority. Other branches of the Aryan race have come into this continent, have established half-caste homes with

native wives, and the outlawed woman has dragged these races down to her level. Other Aryans have come to the land under the rule of a king or a priest and tyranny has inbred and destroyed them. But the Teutonic Aryan brought his home, kept his Teutonic women full caste; the blood has never degenerated, and tyranny has never undermined our institutions. So here we are, ninety millions of us, if not all of one blood, at least all of one mind. The free woman in the home has made the free school; the free school has preserved the free man; and the free man, still abiding by the most ancient ways — the rule of the majority — is working out free institutions.

Now this freedom of ours is of its own kind. There is said to be in the harbor of Havana a most remarkable statue of liberty. A woman stands, with ecstasy in her face, with a shout of joy all but on her lips, with almost delirious eyes turned upward toward her wide-stretched arms, whereon the broken manacles are dangling useless. That is the Latin idea of liberty. But our freedom is another thing. It is not so new-born. If it might be symbolized by a woman, the figure could be represented as a mother who never felt a shackle, toiling wearily yet happily for her family. For this freedom of ours is little more



than the right of a human being to be useful; and to be useful one must sacrifice, must give, must deny, and be happy only in the joy of others. Our freedom, that comes from a free mother in a free home, partakes of her self-abnegation. And so we alone of the Aryans that have no bondwoman's blood in our veins, we who have no half-caste mothers, have been able to rear the children of democracy, men to whom freedom means sacrifice. And as the Aryans of Greece tried democracy with their bondwomen and failed, and the Aryan of Rome tried a Republic with slaves and failed, so they who came to America from Latin countries failed in this new world because their new world homes were half-caste and not free, and the liberty they sought was license and not sacrifice. And by this token we must know that so long as our democracy is altruistic, so long as it is based on self-sacrifice and self-restraint, it will endure. Now we have in our government two great institutions enforcing both self-sacrifice and self-restraint: our schools, for which we spend nearly half a billion dollars in taxes every year without getting any immediate material results for our self-sacrifice, and our courts, which hold us back from our political impulses. And though we claim to base our government upon our federal Constitution,

neither our schools nor our courts, the mainsprings and the checks of democracy, derive their real powers definitely expressed or get the charter for those powers from the Constitution. The schools are purely local in their origin and management; and the veto power of the courts over our legislation is purely an extra-constitutional power interpreted into the Constitution by Chief Justice John Marshall. Literally we are living under a government, the beginning and the end of which — the schools and the courts — are the creation of folk laws! The fundamental law of the nation hedges the legislative branch of the government about with all sorts of theoretical checks; it sets metes and bounds for the executive; and it marks a Pickwickian dead line across which the courts may not step. But as the years have gone by all these checks on the various branches of the government have been broken.

The Constitution declares that the lawmakers shall make laws and that the executives shall appoint men to enforce the laws. But in spite of the adoration of the Constitution by certain mechanical lawyers, the will of the people has changed the Constitution without bothering to go through the empty form of writing in the amendments. Now lawmakers appoint many executive subordinates

through a system of political "recommendations." These subordinates appointed through political recommendation by legislators assist in the enforcement of laws, and these subordinates often are loyal to the lawmakers who secured their appointments rather than to the executives who merely sign the notices of appointment. Also in the face of the Constitution in this country executives make laws. A rather elaborate executive legislative function has developed among us. First, by withholding "patronage," that is, the right of political recommendations from lawmakers, executives may (and certainly do) coerce lawmakers into voting for favorite executive bills in the Congress. Secondly, by voicing public sentiment, and arousing the people, the executive coerces lawmakers to vote for his measures. The Roosevelt policies that were enacted into laws were enacted in the face of a sheer majority in Congress against them. And finally, a third check of the Constitution is broken by the federal courts. For instance, certain district attorneys, marshals, clerks, and judges, forced upon President Roosevelt by a reactionary Senate, sometimes gayly set to work to annul many of the laws which he had secured. So instead of having three distinct branches of government, the legislative, executive, and judicial, we have<sup>15</sup>

lawmakers controlling the execution of laws, executives influencing the making of laws, and courts vetoing laws, and enforcing the laws through bench warrants, injunctions, and court orders of various kinds. And as if that were not enough, by way of diversion, we have lawmakers naming the courts and executives rallying the people to protest against court decisions. If there is any distinct branch of the American government that is not easily amenable to political influence from the other two branches, it is difficult to say just which branch it is. Thus has our flexible Constitution been bent to the needs of popular government and the exigencies of politics. Yet with all this flux of government as a nation we live in admirable self-restraint. Probably Americans are the most conservative people in the civilized world.

But while the Constitution has been losing its rigidity, the federal courts have assumed an extra-constitutional right to veto state and national legislation, and to set aside the decrees of state courts; and now the federal courts are beginning to restrain state executives in the enforcement of state laws. The political sovereignty of the people of the United States probably is more largely in the hands of the American federal courts just now than in any other

single branch of the government. Self-restraint is, therefore, the dominant note in our government. For by permitting this extra-constitutional power of the courts over us we are obviously self-restrained. We have liberty without license. That this extra-constitutionally self-imposed restraint of the people through their courts upon their own political impulses was abused, that it made the courts the organs of a political and financial aristocracy in the days when prosperity was a high potency god, and that there is still some danger of a return of the aristocracy to power, there can be no doubt. The forces of altruism are manifest in the rising democratic institutions in the cities and the states. The opposing forces of greed are manifest in the judicial worship of property rights as against human rights in many courts. This worship of sheer property rights as such is still found lingering in the legal doctrine of the "assumed risk" in labor damage cases, and in the judicial theory that a legislative act is not "due process of law." But on the other hand the opposing forces of altruism and greed in our government are by no means at rest. Probably they will never be at rest so long as we are a growing nation. For where there is rest there is death. The conflict, however fierce, is a sign of our national youth. This

conflict between our democracy and property rights is carried on in the courts — and not by barricades in the streets. And it is carried on in the courts through an extra-legal power of veto upon the legislatures and by injunctions upon administrators of the law. Surely this surrender of the people to the courts represents some large subconscious conviction of the great worth of patient self-restraint even in the face of temporary wrong. We are living peacefully under an extra-constitutional government of lawyers rather than of laws; for lawyers in the courts say the final word about the meaning of our laws: we have no earthly tribunal in our government in which during times of peace a man not a lawyer has, under the Constitution as now construed, more than an advisory function. And slowly as the fear of God — which is the beginning of wisdom — gets into the lawyers, the nation is coming through self-restraint to the attainment of whatever righteous aspirations may be in the hearts of the people.

Therefore, since we are living under a government of the courts, in which the sovereign will of the people is finally expressed by the courts and in spite of laws on the statutes and in spite of administrative theories of duty, it may be well to examine the courts of this nation. Who are the judges that make and all

but execute our laws? In the appendix, page 255, will be found a list of all the judges appointed during the eight years from 1901 to 1909 to our federal bench, and the formal indorsements they had in securing appointment. It will be seen by this list that these judges for the most part are indorsed by business men and politicians, or by other judges who owed their places to the indorsement of business men and politicians. The federal bench of to-day had its birth in politics. In so far as they came from politics, the federal judges knew that politics is largely financed by business. The high-caste Brahmans of politics who form the "organization" in every state, and who extract from business the oil that lubricates politics, all were "for" these judges high and low. There is scarcely a man in the list who set out to his goal fighting the political machine, defying the "organization," and scorning the alliance that made our business and our politics reprehensible during the nineties and the early years of this century. So one may see why the federal bench has its face set against all reform and is inclined to sniff at reformers.

This list proves one thing certainly. That the courts — having final jurisdiction and authority over

things temporal in America — come from the people. Change the character of our democracy, — that is, change the method by which we express our political faith, — and we will change the character of United States senators; thus will we change our courts. The men who named these courts were interested in business prosperity. That was our national god during the closing years of the nineteenth century. Prosperity won a great national election. Prosperity was the dominant idea of the people. A majority of the senators elected from 1890 to 1908 were chosen by railroad attorneys through the state bosses who influenced the state legislatures. Hence property is the dominant thought of our courts. The assumed risk for accidents is on the men who work for railroads in a hazardous undertaking, not upon the capital that employs them in a hazardous undertaking. The assumed risk of failure in farming or in storekeeping along any line of railroad is upon the men who undertake the farming and storekeeping without any guarantee that railroad rates shall move their crops and the merchandise; the risk is not on the men who build the railroads — even in foolish or malicious competition or to reap extravagant promoters' profits. That was the idea of the people when business and politics were allies. The



courts named by the senators who were named by the big property interests expressed the will of the people, and because prosperity was the god of the people, the defense of invested capital as merely invested capital, unrelated to human considerations, dominated the ruling of the courts that came from the people in that day. Money in politics protected money in business. But when the people change their United States senators, the courts will change, and the courts will amend the Constitution to suit the people. For a sentiment strong enough to dominate legislatures and congresses, and demand a constitutional amendment, does not need the amendment. Even if the machinery of our government did not put the courts indirectly into the hands of the people, they would still take the coloring of the prevailing sentiment about them, after it ceased to be a clamor and became settled conviction. And our courts — with all their extra-constitutional power, with all their recent bias toward the rights of property “in its public use” as against human rights — are still our own courts, our own political creatures, and subject entirely to our control. The apparent sovereignty of the courts is really sovereignty of the people. Indeed, as matters stand to-day with the national Senate and the national House organized as

they are, the United States Supreme Court seems to be the most progressive institution under our federal government.

There is an anomalous extra-legal organization in this country known as the Association of Attorneys-general. Something like half of the American states are represented at the annual meetings of the Association, either by their attorneys-general or by their assistants. These men are elected for short terms — usually for two years — and they come to these meetings directly from the people. Probably these attorneys-general more clearly than any other body of men in the United States interpret the aspirations of the American people as these aspirations are being formed into statutes directed against the arrogant dominion of the thing called property “in its public use” in this government. It is not strange, therefore, that we find these attorneys-general chafing under the veto of the federal courts upon state legislation, passed to neutralize the political and social power of property or capital or whatever form wealth takes in the social order as opposed to the rights of men. These attorneys-general are the counsel for the centrifugal force of society as against the centripetal; the advocates of the common altruism of all men, against the common greed of all men.

They are special pleaders for democracy; but like all counsel, their pleadings must still remain pleadings and not judgments. Yet the fact as announced at a recent meeting of the organization that one hundred and eight injunctions were pending in federal courts against the enforcement of state laws, in 1908, indicates that the need of counsel for the democracy is evident. Probably the number is understated. A recent inquiry made to the attorneys-general of twenty-one states taken at random, as to the number of laws suspended by suits in the federal courts during the two years from 1907 to 1909, brings the following illuminating answers: South Carolina, 5, lost all; Florida, 5; South Dakota, 5, 1 lost, 1 won; Maine, 1 pending; Minnesota, 1 lost; Utah, 2, 1 lost, 1 won; Indiana, 7; Georgia, 10; Massachusetts, 1; Nebraska, 1 won, 2 pending; Alabama, 13, won about half; Colorado, 2 pending; Vermont 1; Montana, 1; Oregon, 5, 2 pending, won 3; Michigan, 5, won all; Washington, 3, won 2; Ohio, 6, won 5; California, Virginia, and Oklahoma each 1.

Now, each of these laws attacked represents from one to ten suits, and it is interesting to note that these suits in a majority of cases attacked railroad laws, in many cases tax laws; in some cases food laws — usually stock food or pure paint laws, and occasionally

liquor laws. Reading fully the answers above quoted, one is constrained to believe that the right of the state to tax property, and to destroy it by prohibition under the police power of the state if necessary, is conceded by the courts, but that the right to make railroad rates for the common good under the police power of the state is contested.

The Fourteenth Amendment to the federal Constitution generally regards legislative acts of taxation and prohibition as "due process of law" — according to our federal courts; but the Fourteenth Amendment considers railroad rate-making legislation, whether by the state or by the federal government, as "due process of law" only until a federal court can think the matter over! A rather attractive, if not graceful, curve might be made by a person of a mathematical turn, indicating the variableness of our United States Supreme Court, upon this subject of "due process of law" during the thirty years past. Thirty-three years ago the United States Supreme Court decided the case of *Munn vs. Illinois*, held —

"When one devotes his property to a use in which the public has an interest, he, in effect, grants to the public an interest in that use and must submit to be controlled by the public, for the common good, to the extent of the interest he has created."

Elsewhere in the same opinion, the court says:—

“If it be admitted that the legislature has any control over the compensation, the extent of the compensation becomes a mere matter of legislative discretion. The controlling fact is the power to regulate at all.”

Clearly that decision puts the state regulation of rates along with the state's power to confiscate, as it confiscates in the case of prohibition, race-track gambling, impure food, and the like. The regulation of rates by the state is made a police power, perhaps on the theory that the right of the community to rates that would haul the crop to market was as important as the rights of the bondholders of foolishly competing railroads to interest on their ill-advised investments. The sacred rights of “property devoted to public use” — invested in railroad bonds — often meanly invested in railroads built for business spite or commercial greed — was held in those days to be no more sacred than the rights of property in farms.

Again, in 1876, the Supreme Court declared in the case of *C. B. & R. R. vs. Iowa*:—

“When the legislature steps in and prescribes a maximum charge, it operates upon this corporation the same as it does upon individuals engaged in a similar business.”

Clearly the court recognized legislative rate-making as "due process of law" performed under the police power of the state. The court repeated this opinion. For in the case of *Peik vs. C. & N. W. R. R.*, the Supreme Court held —

"When a property has been clothed with a public interest the legislature may fix a limit to that which in law shall be reasonable for its use. The limit binds the court as well as the people."

Much is said about the stability of government under courts, yet the statutes have not changed, the Constitution has not changed, but the United States Supreme Court has changed, and now that which once was law is not the law. For the court gradually edged away from that doctrine of thirty years ago, and made the law as it is to-day independently of legislation or of any amendment to the Constitution. And in 1885 we find the Court crawfishing a little from its decisions of the seventies. In the case of *Stone vs. Farmers' Loan and Trust Company*, the Court holds:—

"From what has been said it is not to be inferred that this power of limitation or regulation is without limit. The power to regulate is not the power to destroy, and limitation is not the equivalent of confiscation."

There we find the police power of the state slipping gently out of rate controversies. A few years later, in the case of *C. M. & S. P. R. R. vs. Minnesota*, the United States Supreme Court found that the question of the "reasonableness of the rate" established by the state was "eminently a question for judicial investigation requiring due process of law for its determination." There the police power of the state kissed good-by to railroad legislation.

After that decision the police power of the state began consorting with brewers and race-track gamblers and makers of bad food, and other persons of inferior social caste. "The controlling fact is," not as the court said in 1876, "the power to regulate at all." There has been a change in our law, with no change in anything except in the personnel of the court. "The controlling fact" is the "reasonableness of the rate." But the court felt it was renigging, and in another opinion saved its face in 1892 — *Budd vs. New York* — by saying in its cuff aside and obiter dicta:—

"What we said in the opinion in *United States* 134 (above quoted) as to the question of the reasonableness of the rates of charge being one for judicial investigation, had no reference to a case where the rates are prescribed directly by the legislature."

The statute failed; it denied the right of court review! A little later, in the case of *C. & G. T. R. R. vs. Wellman*, the case turned on the power of the legislature to regulate rates at all. In upholding the Michigan statute, the United States Supreme Court held that:—

“The legislature has the power to fix rates and the extent of judicial interference is protection against unreasonable rates.”

In the case of *Reagan vs. Farmers' Loan and Trust Company*, 154 U.S. 362, the Supreme Court enjoined the enforcement of a Texas law until the reasonableness of the rates fixed was determined by evidence. That is a long jump from the *Munn* case, wherein rates were fixed under the police power of the state, and from the *Peik* case, wherein the same court held, nearly twenty years before, that if the rate has been improperly fixed, “the legislature and not the courts must be appealed to for justice.” And mind you, all this edging along from “police power” to “due process of law” was made, not by unanimous decisions of the Court, but by four to five, three to six, and by two to seven dissents, except in a few cases — one being that case just cited. The law changed, not because it was clearly right to depart from the former ruling, but because of the changing



temperament of the people as manifested in their judges. The people in those years were clamoring madly for more railroads. The people were eager to concede anything to capital. The railroads were getting control of state politics, naming United States senators, who in turn named federal judges; and the Constitution was amended by the people, without bothering to go through the form of passing the amendments in the legally prescribed manner. No special credit is due to the writer hereof for originality in these researches above noted. They are printed in a book entitled "Railway Problems," compiled by William Z. Ripley, of Harvard, surely a most respectable source.

About the time the federal court began rate-making we find the United States Supreme Court wrestling with the question: What is a reasonable rate — what profit should a rate yield? Rate-making had passed entirely from the legislatures to the federal courts. In 1898 the Supreme Court had gone far enough to decide that "the company is entitled to ask" "a fair return upon that which it employs for the public convenience," which, under the evidence upon which the court decided, was something like 1.99 per cent, 4.06 per cent, 6.84 per cent, and 10.63 per cent — according to the value of the railroads

involved. But in the case of *Cutting vs. Goddard* in 1901 — a stockyards case — it seems that times were better than in 1898, and the court decided in effect that 10 per cent was not too much, and that rates which reduce the earnings to 5.3 per cent are unconstitutional. These decisions also are cited in the above-named book.

But the curve has turned. In January, 1909, the Supreme Court of the United States held in the New York Gas case that 6 per cent is about fair. In other words all under 6 per cent must be subjected to regulation, only upon "due process of law." All over that sum may be regulated by the police power of the state for the common good. That is the law to-day. If the people change, the laws may be something entirely different to-morrow.

But let us examine a little further and see again how our courts follow the people. In the eighties and late seventies an emotional prohibition wave was moving over the country. In that day the movement probably represented more clamor than sentiment. The conservatism of the people of most of the states was against it. The feeling was too hysterical, differing greatly from the prohibition movement to-day, which is based upon business conviction, rather than emotion. So in the nineties we

find the courts guarding real sentiment — whether right or wrong is immaterial to the case — against clamor. But to protect conservative sentiment the Court had to reverse a long line of its own decisions, and to all practical intent it had to amend the Constitution. But the Supreme Court evidently regards the Constitution as an unimportant matter between friends. For almost an even century prior to 1890, the law of the land has been that the control of intoxicating liquors, including the matter of interstate shipments, was within the police power of the states. The question has been passed on in the New Hampshire License case (5 How. 279) and the power of the states over such shipments upheld. This doctrine was squarely overruled in *Leisy vs. Hardin*, 135 U.S. 100 (1890), and it is now contended that Congress is powerless to release to the states the right to regulate or to interfere in any way with interstate shipments of liquor.

That we may not be considered hasty in the conclusion that the Constitution is a flexible document, let us consider another phase of its mobility. The alliance between business and politics which Seth Low, former mayor of Greater New York and former president of Columbia University, has chosen to call “a system of feudalism” “fostered by corporate con-

trol of our government," has clearly considered the demand for equitable rates on railroads as mere demagogic clamor. Some day the courts will see things differently. But seeing things as they saw them, the Constitution had to be amended to check the clamor.

So we find the Constitution amended again in this wise: After the adoption of the Eleventh Amendment to the Constitution, no state could be sued except at the suit of another state brought in the Supreme Court. It was held uniformly by the courts that a suit against the chief officers of the state was in effect a suit against the state itself, and, therefore, could not be maintained. This was the doctrine of *Fitts vs. McGhee*, 172 U.S. 516, decided in 1899. There the Supreme Court said:—

"A suit to restrain officers of a state from taking any steps by means of judicial proceedings, in execution of a state statute to which they do not hold any special relation, is really a suit against the state within the prohibition of the Eleventh Amendment of the federal Constitution."

In 1908, in the famous *Young* habeas corpus case, the court announced exactly the contrary doctrine and held that a suit against state officers who were endeavoring to enforce a statute alleged to be unconstitutional was not a suit against a state.

One more instance may be cited of the pliability of our fundamental law, and we shall finish. It was formerly held that courts of equity could not enjoin the enforcement of criminal statutes; but of late years, the United States courts, while assuming to stand by the same rule, claim that injunctions may be issued to prevent a multiplicity of suits, and for the purpose of enforcing the restraints of the power of states enumerated in the Fourteenth Amendment, the federal courts have rarely refused to use the power of injunction to test the validity of state statutes.

It is more difficult to trace this change, step by step, and from case to case, than the other changes referred to. Nevertheless, the evolution in practice is easily discernible. It has been accomplished rather by magnifying the importance of an exception to the rule, than by a change in the rule itself.

In the early cases in which the court declined to enjoin the commencement of criminal prosecutions under a state statute they quoted with striking frequency the rule as stated in Story's "Equity Jurisprudence," as follows:—

"There are, however, cases in which courts of equity will not exercise any jurisdiction by way of injunction to stay proceedings at law. In the first

place, they will not interfere to stay proceedings in any criminal matters, or in any cases not strictly of a civil nature; as, for instance, they will not grant an injunction to stay proceedings on a mandamus or an indictment or an information or a writ of prohibition. But this restriction applies only to cases where the parties seeking redress by such proceedings are not the plaintiffs in equity; for, if they are, the court possesses power to restrain them personally from proceeding at the same time, upon the same matter or right, for redress in the form of a civil suit and of a criminal prosecution. In such cases the injunction is merely incidental to the ordinary power of the court to impose terms upon parties who seek its aid in furtherance of their rights." (Vol. 2, Sec. 893).

In the later cases, however, including the famous case of *Ex Parte Young*, the court announced a different rule, as follows: —

"The remedy at law of a railroad company to test the validity of a statute fixing rates for railroad transportation by disobeying the statute once and submitting to a criminal prosecution is not so adequate as to deprive equity of jurisdiction, where several years might elapse before a final determination of the question, pending which observance of the statute, if finally found to be invalid, would result in taking its property without due process of law, with no possibility of its recovery."

Now in all these cases there is no doubt but that the court has decided conscientiously. Moreover, in every case the court, whether consciously or not, was

following what, according to its lights, seemed to be the real justice in the matter; and because courts are human, it is more than likely that the court took its color of the right and wrong of the matter from its environment, from the newspapers and magazines and books it read, from the men it met, from the public sentiment it felt. That, of course, was unconscious. And in so far as American convictions are deep rooted, the courts — even our Supreme Court — cannot escape from these convictions, and so ultimately the will of the people prevails.

Now all these opinions of the Supreme Court are set down here, not in disrespect for the courts and laws, but to show how laws, written and unwritten, court-made and enacted, follow the dominant thought of the people. The Granger cases, decided in the seventies, reflected the opinions of men just home from war, to whom property as such was not so sacred as the rights of men. They had seen Lincoln, without constitutional warrant, take \$2,000,000,000 worth of legal property in slaves from the slaveholders because it was morally right. So property as opposed to men didn't impress that generation. Then, as the nation became richer, as the struggle for wealth began to engross the people, the Supreme Court unconsciously colored its opin-

ions, and the "protection of the vested rights of property," became, as announced formally by the United States Court in the Wellman case in the nineties, "the supreme duty of the courts."

And so when Mark Hanna was the head of the extra-constitutional government, the Supreme Court followed the people and decided that 5 per cent interest on capital was unconstitutional and that 10 was not too much. The courts are checks upon public clamor. But when they face public sentiment, they find just as good law on the side of a definitely settled public opinion as there is on the other, and the four to five majority begins to waver toward public sentiment, and so the people rule. And while the courts are hesitating, uncertain whether it is clamor or sentiment that is roaring through the land, the people profit greatly by the unpopular decisions of the courts. For these opinions teach patience — self-restraint — the one great need of democracy. For it develops faith by trying it sorely. And the slowness of the courts to respond to public sentiment is one of the real — though at times amply disguised — blessings of this government.

There is much ponderous folly about the hair-splitting technicalities of the courts, much irritating caste feeling of the profession expressed in their stupid



legal verbiage, and much laziness — both of lawyers and of judges — in the “law’s delay”; but after all the courts are the anchors of democracy. And for that matter so is our most flexible Constitution; though many solemn persons think the courts and the Constitution are the foundation of democracy. Yet the Constitution will be picked up by the courts and dragged along after public sentiment as fast as it changes. The Constitution is as responsive to public sentiment after it has definitely settled as any of our institutions, and the courts are as mobile as the people. Persons who are resting their vested wrongs upon the Constitution may as well prepare for a change. For the Constitution, which meant one thing in the Granger days of the seventies and meant another thing in the prosperity days of Hanna, seems to be getting ready to mean something entirely different within a few years.

The trend of recent United States Supreme Court decisions is away from the precedents of ten years ago. The Virginia Corporations Commission decision sets the procedure in certain railroad cases through the state courts. The Los Angeles telephone decision refuses to interfere with a rate even though the councilmen making a rate are subject to the recall, and further decides against the company

(among other things) because they refuse to bring their books before the council to aid the council in making rates — a most important decision. In the Knoxville waterworks decision, the Supreme Court holds that until the water company has actually obeyed the rate-making ordinance it has no right to claim confiscation under the ordinance, and that “bonds and preferred and common stock issued under such conditions (*i.e.* in return for services not rendered) afford neither measure nor guide to the value of the property.” The Oregon woman labor case sustains the right of the state to limit the hours of labor of women.

Even the time-honored “assumed risk” of labor seems to be growing less. For the Supreme Court and practically all the federal circuit courts have sustained the safety appliance law which takes away from railroad men the blessed right to lose legs and arms and lives — or quit work. Moreover, in reversing Judge Gray of Delaware, in the commodities case, the Supreme Court delivered a glancing blow at the Fourteenth Amendment as a protection for property rights; and the blow may produce an abrasion that may develop into a destructive tumor. But the most revolutionary language used by the Supreme Court in many years was used by

Justice Moody in reversing Circuit Judge Lurton, now on the Supreme bench. Judge Lurton had suggested that Congress would not pass a law so harsh as to compel railroads to equip their cars with safety appliances at a great (and perhaps the judge thought at a confiscatory) expense. Justice Moody's opinion, reversing<sup>1</sup> Judge Lurton, indicated rather broadly, and almost merrily, that laws had to be harsh to some one, and that the employés were less able to bear the hardships of loss of life and limb than the railroad company's stockholders were to bear losses of dividends. The opinion of Justice Moody will bear reprinting, for it is a definite step in a new direction. He says:

“Congress, not satisfied with the common law duty (between master and servant) and its resulting liability, has prescribed and defined the duty by statute. We have nothing to do but to ascertain and declare the meaning of a few simple words in which the duty is described. It is enacted that ‘no cars, either loaded or unloaded, shall be used in interstate traffic which do not comply with the standard. There is no escape from the meaning of these words. Explanation cannot clarify them, and should not be employed to confuse them or lessen their significance. It is urged that this is a harsh construction. To this we reply that, if it be the true construction, its harshness is no concern of the courts. It is said that the liability under the statute, as thus construed, imposes so great a hardship upon the railroads that

it ought not to be supposed that Congress intended it. . . . But this argument is a dangerous one, and should never be heeded where the hardship would be occasional and exceptional. It would be better, as was once said by Lord Eldon, to look hardship in the face rather than break down the rules of law. . . .

“Where an injury happens through the absence of a safe drawbar there must be hardship. Such an injury must be an irreparable misfortune to some one. If it must be borne entirely by him who suffers it, that is a hardship to him. If its burden is transferred, so far as it is capable of transfer, to the employer, it is a hardship to him. It is quite conceivable that Congress, contemplating the inevitable hardship of such injuries, and hoping to diminish the economic loss to the community resulting from them, should deem it wise to impose their burdens upon those who could measurably control their causes, instead of upon those who are, in the main, helpless in that regard. Such a policy would be intelligible, and, to say the least, not so unreasonable as to require us to doubt that it was intended and to seek some unnatural interpretation of common words.”

These and other recent decisions of the Supreme Court indicate that the court feels the moral impulse that is stirring in the nation. And whatever the people aspire to earnestly, unselfishly, persistently, they may have as the law of the land.

There is therefore little reason to fear the growing power of the federal courts. They change with public sentiment. Fifty years ago, lawyers used to

think that there was no common law in the United States federal practice; that federal courts acquired jurisdiction only by statute, either the acts of Congress or the Constitution. But when we freed the negro, we changed all that. The Fourteenth Amendment was aimed exclusively at the rights of the freedman, but it incidentally prohibited states from taking property "without due process of law." Some smart lawyer discovered this phrase, applied it to vested rights of stockholders of corporations. A most interesting book, "The Power to Regulate Corporations and Commerce,"<sup>1</sup> by Frank Hendrick, First Ricardo Prize Fellow of Harvard, has been written to prove that not only is there a common law jurisdiction in federal courts, but that under that jurisdiction the federal courts, as the ultimate authority of the federal government, must have "final determination of rights arising from contract or the use or possession of property." This is advanced ground. But there is no escaping from the logic of this position. There must be a last word in the inevitable struggle between the democracy and the rights of invested capital. The more surely the matter is settled, the more definitely responsibility is fixed, the more equitably will the adjustment of matters at issue be made. Here, then, in the Supreme

<sup>1</sup> Putnams, 1909.

Court of the United States is our government anchored. Here will our great problems be settled. Yet how easily this court is reached. Assuming a radical President as the climax of the growth of popular radicalism for six years, in 1916, within two years he could have a radical Supreme Court. Only one or two radical decisions would be needed. The lower courts would fall in line. And unless the people change their minds in six years, a radical Supreme Court is coming. For after all it is the people's country. They rule — even over the courts.

And that brings us back to the real foundation of this government — the one institution which shall determine the destiny of the people. That institution is the one institution over which the people have the most absolute control — the public schools. As the matter now stands, we are a people from the sixth grade. And the problem of democracy is not what the secret ballot will do for us, not what direct primary nominations will do for us, not what direct legislation will do for us, not what our commissions and charters and responsible administrators will do for us — not even what the courts will do for us. For these are but machines; means, not ends. The vital question is what will our schools do for us. The problems before this nation require expert treatment. The

supreme court of prices, which Mr. Andrew Carnegie says is bound to come, "disguise it as we may," which our anti-trust laws make necessary, and which President Taft advocated in relation to railroads in his message of January 7, 1910, this supreme court of prices will require great national self-sacrifice — a surrender of many individual rights. This must come from a citizenship of a higher type than the world has ever seen before. For that commission, or whatever body, — whether legal or extra-legal, — which shall finally pass upon the equities of prices in our national workshop will be chosen by the people, — perhaps indirectly as the Supreme Court is chosen — but still by the people. In the end the people will rule.

But with all our machinery for self-government, what a botch we are bound to make of our experiment in democracy if the sense of justice of the majorities that rule comes from the sixth grade of our common schools. For as sure as there is a just God, the more we make laws unleashing the power of the people without widening the vision of the people, those laws, those very laws that release the people from political bondage, will be "vessels of wrath, fitted unto destruction."

## CHAPTER IX

### A LOOK AHEAD

It is difficult to imagine what a tremendous splash in the tide of humanity was made by the invention of fire-making, or of the lever, or of the wheel. How the current of affairs was changed by each of these devices. How many ten thousands of years man consumed socializing fire, for instance, slowly and with great labor and many wars taking away the special privileges of priestcraft, or social distinction that went with fire-making to the fire-makers. When fire-making lost its mystery and became common to all the people, what a change had come over mankind — what advancement had been reached. Man had ceased to migrate with the birds, and had separated himself from the herd into families, had learned to cook, and had lost his hairy coat. With the invention of the wheel came the overthrow of the rule of the strong. And as the mystery of the wheels became common to the people, — through the centuries, — as the wheel became socialized, so that every man



might make and have and use a wheel without paying tribute or obeisance, the leash of the strong upon the weak slackened just a little. The history of man has been a story of the socializing of human inventions, taking them from the few who received homage and taxes for them, and distributing the inventions and the blessings they brought among all the people.

The invention of writing gave us commerce and kings; its socialization gave us the invention of printing. Printing took away the special privileges of the priests, but it gave the power of the priests to the traders; gunpowder armed the common man, and the socialization of gunpowder destroyed feudalism, and made our modern democracy possible. Great inventions create classes of men with more or less power over their fellows. Then slowly the people take over the inventions, make them common to the race, and the special privileges attached to a particular invention pass; and with the passing of these privileges the economic, social, and spiritual life of the people changes.

To-day the world is trying to socialize the invention of steam. The nineteenth century was one of "many inventions." But all of them, that are of first importance in the world, are subsidiary to the discovery of the power of steam, or are interrelated to it. We

have shown that the economic manifestation of the invention of steam is the invention of the corporation. Not that the corporation is new in the world, neither is steam; the vapors of boiling water and the legal partnerships of men have been known for thousands of years. But with the harnessing of steam came the consolidation of capital. The vast physical power of the steam engine produced the vast economic power of capital. The steam engine is too big for the common man to own. It requires two or twenty or two thousand, or two million, or more, to own it, and to furnish material for the engine to work upon. And, moreover, it put out the individual fires in a million little forges; it took from the homes and shops of the people millions of little wheels, and gathered to itself all the levers in the world. It was as though, by some strange reversion to old days, a great pre-Adamite giant had come stalking into the earth gathering unto himself all the fires and their privileges that men had wrested from him in the morning of time, all the wheels and their privileges and all the levers and their special powers that had passed among men in the childhood of the race. The world stood afraid before the steam engine. And to those who controlled it we gave privileges and rights and immunities that we gave of

old to the priestly fire-makers, the kingly wheel owners, the royal purveyors of the secrets of the levers. Steam harnessed by capital made a new mystery that demanded our worship. And how we have bowed to it! Kings, potentates, priests, "principalities and powers," — all have paid deference to the captain of industry. He who can control capital has stood before kings. Capital has broken caste, the last vestige of feudalism; and where caste exists to-day, it is a hollow shell that will crumble before the new century is much older. Our problem in this century must be the socialization of steam; and incidental to that will be the control of capital.

For to-day, under the present order of things, capital rules the world. Churches are built and creeds formulated to please capital. Wars are begun and ended and nations established and laws enacted for the profit of capital. Politics is the struggle of capital to hold its legal advantage. The priests of capital in the skyscraping temples in the great cities of the world hold dominion over the minds and bodies of the civilized people on this planet as the fire-making priests of primeval days ruled their little worlds from altars and caves. For our high priests to-day, holding dominion over the fires and wheels and levers of the world, have assumed to make the morals of the world

to fit their convenience, and for their services have exacted such tribute as seemed equitable, to wit, all the traffic will bear. But the reaction is as inevitable to-day as it was of old. The difference between the reactions will be only a difference of time. We live in a rapid age. The nineteenth century saw the greatest revolution in the world — that from feudalism to industrialism, from the control of kings to the control of capital. The twentieth century will see even a greater revolution — that from the control of capital to the control of men. Capitalism is republican; the next evolutionary step will be toward democracy. For capital, controlling the fires and wheels and levers of the world, after all has been only the world's servant. Steam has been turning power presses, spreading knowledge among men, making electricity to spread intelligence abroad in the earth, to transform distance into a physical fiction, to draw men together in acquaintanceship that in the nature of things must end in brotherhood. Capital, with all its diabolical self-interest, has been engaged in schooling men well, in housing them warmly, in clothing them decently, in providing them wholesome food, and making them physically and mentally stronger men than ever the world has seen before this generation. It must have been thus that the ancient inven-

tions were socialized. As they made man stronger, he captured them. It is a world-old history of human progress. Moreover, the same human nature is working on this our latest problem that worked upon problems that faced man as a child. We face a new fact in the world; fear it; let it establish our moral relation to it, as a thing apart from our common daily run of life; the new fact becomes a fetish, capturing us with its new creed; we struggle and battle and fret ourselves to little avail; and lo! we see some fine morning that the new fact is to be handled according to no new creed, but according to the old law of kindness and that common sense of simple justice between man and man known as righteousness. Thus men have captured and made part of society fires and wheels and levers and printing presses and gunpowder and Christ's creed; and thus we shall capture steam, control capital, and establish democracy, not by intricate laws and elaborate government machinery, but by the fundamental kindness of men to men, the basic unselfishness of man widened and applied to men, in their new relations. Only as man's range of unselfishness has extended from the family to humanity has he grown useful and happy in his usefulness upon this globe. So in the conquest of steam will he win by no new set of morals, but by awakening to

the widening life that steam has brought, and applying to that greater life his divinely given kindness.

Now in the contest for the control of capital by society through governments, those who would control capital are divided into differing, if not opposing, schisms or factions or schools: those who would distribute the profits of capital according to the needs of men; and those who would distribute profits according to the achievements of men. "From each according to his ability; to each according to his needs," say the socialists. "From each and to each according to his achievement," say the individualists. "We claim for each man equal rights with all other men," say the socialists. "We claim for each man equal rights to display his inherent inequality to all other men," reply the individualists. "We demand that every man's needs be satisfied," say the socialists. "We concede that certain fundamental needs, such as food and warmth and shelter, be guaranteed by society to every man willing to work — not so much perhaps to help the needy man as to prevent the brutalization of those in plenty," say the individualists, and add, "but after that, all that society should do is to guarantee that every man's actual inequalities of achievement shall be reflected with reasonable accuracy in his social rewards."

And that brings us to the problem of the century: Shall we control capital as socialists or as individualists, distributing the profits of capital according to our needs or according to our achievements, fostering the equality of men or developing their essential inequalities? That we are to control capital and make some much more equitable distribution of the profits of capital than now is made seems indisputable. The vast restlessness of the common people of the world, and particularly of America, proves that. It will be idle for capital to resist control; it will be dangerous to civilization for capital to arrogate to itself the divine right of kings and plead a different and a higher morality to govern its activities. The more capital resists control, the more of it will be destroyed by the struggle to control. The more selfishness capital puts into the struggle of the people to control it, the more selfishness capital will engender. "As ye sow, so also shall ye reap." But on the other hand, the more fundamental faith in the justice and fairness of men organized in government those who control capital exhibit in the arbitrament of the problem of the century, the more capital will there be in the world when the question is settled.

But the folly of capital seems to be like the folly of kings. Capital is making the same struggle

against control and distribution according to needs of men, as witnessed by the contest with the socialists of Europe, that capital is making against the control and distribution of capital according to the honest achievements of men, as witnessed in the contest in America. It is, however, the American contest that interests us chiefly. Here the socialists have perhaps the smallest following they find in any civilized country. Here is an earnest attempt to control capital and distribute its profits solely upon the achievements of men, allowing, of course, for that narrow margin of need which must be provided for if those in comfort shall not grow selfish and brutalized by the constant appearance of cruel want.

The American struggle to socialize steam by controlling capital, this vast new economic growth from the physical fact of steam, may be epitomized by the word "democracy." Democracy, the child of steam, is seeking to control capital, its economic brother. The struggle proves that a real force has come into the world — a social element with its two forms of motion — inward and outward, centripetal and centrifugal, egoistic and altruistic, capital and democracy. Now, it may be fairly asked what is democracy trying to do with capital. It may be easily seen that as the control of the government, whether of the city or the



state or the nation, passes more directly into the hands of the people, profits shrink. In the earlier chapters of this book, we saw that as money gets out of politics profits decrease in public service corporations. Here are three concrete typical instances: The referendum in the cities makes it impossible to grant franchises carrying large profits for promoters, and this forces municipal ownership, which, being translated, means bonds issued at a low rate of interest. In the states men nominated by direct primaries are demanding that railroads issue stocks and bonds only upon the valuation of the property; and that means only legitimate profits in flotation. In the nation, as the people are awakening to their power, presidents, legislatures, and courts are curtailing the powers and profits of capital invested in combinations restraining trade. Everywhere that democracy touches capital interest shrinks, profits decrease, dishonest deals and speculations cease. What is democracy trying to do?

Now, as a working hypothesis, let us suppose that our American democracy is trying to distribute the profits of capital according to the achievement, and not — except secondarily — according to the needs of men. It becomes necessary to define achievement. It may mean one thing yesterday, a certain

thing to-day, and something entirely different to-morrow. Indeed, the world's progress may be read in the changing definition it makes for achievement. One may say achievement is social service. That sounds definite and certain, as the lawyers put it. But every age sees a change in what it regards as social service. In imperial Rome the soldier was the chief social servant. He had the "power and the glory," because the state was so organized that the soldier deserved much credit for the stability of society. In the Middle Ages the priest was the chief social servant; his achievement was best rewarded, because he held the state together. But with the invention of printing and gunpowder the soldier and the priest were no longer needed, and their achievements were unimportant, and they fell back to secondary places in the organization of civilization and took inferior rewards. In the transition state between the days of the power of the soldier and the priest on the one hand, and on the other hand our modern days of republicanism, there was a time when the king and the baron and the feudal servants held the social organism together. Then the achievements of the lord and overlord were important, and they had their rewards according to their talents. But the social organism changed. The time came in the last century when

the man who could handle wisely the surplus earnings of the people, invested against a rainy day, was the most important man in the state. So the capitalist's social service was deemed the greatest achievement, and he took the place in public esteem and favor, and consequently in power, of the soldier who gave way to the priest, and of the priest who stepped aside for the overlord.

Now democracy in America is catechizing the capitalist. We are asking him to define his uses. We are demanding that he show cause why he should not follow the soldier, the priest, and the baron. That is what all this commotion in our politics is about. Over and over we hear this dialogue: "Where did you get it?" asks old Demos, rubbing his eyes. "I earned it," replies Cræsus. "How?" "I built a railroad." "But," insists Demos, "the railroad cost you only twenty million and you took sixty million." "Promoter's profits," replies Cræsus, beginning to move on. "Stop thief," cries old Demos, and hales his friend into court. Or sometimes the dispute occurs over the rate charged for a given service. "This is my business, I have a right to its profits," declares Cræsus. "I am your partner," retorts Demos; "but for me you would have no patronage. Let's see the books." And they look at the books,

and down come the rates, and old Demos chuckles. Or if there is further hitch in the matter, he says, "Come now — down with the rate, or I'll go into business myself." "Who are you that you should do this un-American thing—invade the domain of private ownership?" "I," replies old Demos, "I am a man." "A mere man," replies Cræsus, "and this is a great mystery — this business." "All right," says the catechizer, "but I am the man who found that the mystery of soldiering was common courage; that the imponderable mystery of the Bible which I took from the priest and opened was common sense, and the inscrutable mystery of government that I took from the overlord was common honesty. Behold, I am ready for another mystery! Come now — down with rates, get your profits down to six per cent, or I shall borrow money from the same widows and orphans that supply you at three per cent, and go into this business myself." "But the widows and orphans whose earnings I have taken?" whines Cræsus. "They are my friends; they will take my notes," replies Demos, and advertises for bids for the municipal plant.

But when Demos finds the man who has invented something, whether a business system, a telephone, a combination of effective men, or a religion, there

Demos stops. There society is willing to lavish its rewards. That is achievement. All democracy demands is value received. If the capitalist can show that, he may have his millions and welcome to the care they bring him — or the joy, if he is wise. In this new definition of achievement which democracy is making for the capitalist, the first requirement is that achievement shall return to society value for the money he gets; next that the money shall be taken honestly. And now by inheritance tax laws in thirty-seven American states democracy is demanding that rewards for achievement shall not descend unto the third and the fourth generation.

It is difficult to say just what democracy's definition of achievement for capital will be ultimately. But it is not difficult to see that the tendency of the definition to-day is toward limiting the legitimately rewardable achievement of the capitalist to the accumulation and investment of the actual surplus earnings of the people with a small profit for handling these funds. Obviously the funds are his in trust. He has earned no large part of them. He is acting for the men and women whose thrift has produced the capital. If he invents business systems and combinations that have economic value, — that save money for the people and earn large returns honestly,

— his reward shall be the inventor's rather than the capitalist's. But the day of the rule of the captain of industry is rapidly passing in America. In all the world there is not a soldier ruler of any importance. The day of the temporal power of the pope and the cardinal has gone. The king or overlord in civilization to-day is but a figurehead. And to-morrow the capitalist who now dominates civilization will take his place beside the soldier, the priest, and the statesman — each needed, none absolute. For democracy will have many servants, but no masters. The democratic mind of all the civilized world seems to be coming to the conclusion — by leaps and bounds in Europe, and slowly in America — that much of the pretended achievement of capital is empirical. In thousands of instances the people have seen promoters and operators taking great rewards from the public, and giving back slight value to society. So little by little the people have lost their faith in the divine right of capital to rule. They have seen the sham of it, and letter upon letter, word upon word, they have read the dishonesty of these shoddy transactions. Clamor is ceasing. But there is a deepening conviction in the American mind that capital shall not be a law unto itself. Thus we find in many of our great cities, in certain of the states, and in the nation

definite legal restrictions upon the issue of stocks and bonds, upon the rates of public service corporations, upon the character of the service required from public service corporations; prohibitions of many activities in which great aggregations of capital are invested, and special taxes upon capital for the mere privilege of doing business. These restrictions, prohibitions, and special taxes are new things in our politics. Ten years ago one heard them referred to as un-American, just as the old Tories of England used to denounce any interference with the king's prerogatives as 'treason.' But kings and capital are no longer sacred. The once un-American limitations of the activities of capital are increasing steadily. As money leaves politics by special invitation of democracy, the rights of property are growing narrower and narrower; the rights of men, broader and broader. Achievements of men with capital are defining themselves more and more closely into the sphere of rigid honesty; not a new-fashioned legal honesty, but an old-fashioned Mosaic honesty. Morals have not changed, but light is turning upon certain shady transactions, and democracy understands them. It is applying to them not so much a quickened, as an enlightened, conscience. It is not so much a moral awakening that we have had, as a moral enlighten-

ment. The schools have taught the people, the people have revived the politicians, and they have remade the law. But so far as the changes in our national life have been political, they do not seem to be manifest so deeply in laws recasting our moral and economic relations, as they are manifest in laws broadening the scope of the individual's participation in the city, the state, and the national governments.

Democracy is arming itself with the full power of the ballot. It is vastly more important that it shall have weapons and equipment for the fight than that it shall have a programme. The laws enacted during the past ten years restricting capital are unimportant. The prohibitions upon capital are unimportant — though they are widespread. And the taxation of capital is of little permanent significance — though the tendency to tax capital is growing. The important thing, the permanent thing, manifest in our growth as a people is the growth of democratic institutions — the broadening and deepening of the power of the people as shown by the adoption of the secret ballot, the purification of the party system, the spread of the direct primary, and the popular acceptance of the initiative and referendum and the recall. The deepening power of the people



means that the people are preparing by some subconscious prescience for a great struggle. They do not know definitely what it is. In the nature of things they may have no programme. A cut and dried platform, a formal declaration of principles, an economic or a social scheme would limit the scope of the movement and curtail its usefulness. Democracy of the twentieth century may have no prophet now — no leader now. It must grow. Coming events must be met, not by a party or a set of principles, but by an attitude of mind. The reaction must be simple, but inevitable. In the socialization of steam which shall equalize the forces of capital and democracy of only this we may be certain: that in its outward form our social, economic, and political organization shall change; but that human nature, which is essentially kind and also essentially selfish, shall remain the same. But we may hope at least that the essential selfishness of men may be tempered by the coming change into some form of selfishness wherein kindness may extend the selfishness of the man from his family or his clan, or even from his city or his state, to a larger group, so that he may be greedy for the common good.

For it is indisputable that we are acquiring a national public sentiment. Our public men in office

and out of office are giving a national expression to our common aspirations. This national public sentiment is not the belief of our rich men, nor of our slums. It is not the trained judgment of the intellectually fittest, neither is it the bias of the uninformed. It is calm crowd judgment, amalgamated in the heat of discussion, but cooled in sober second thought. It holds about so much selfishness as imbues the average man, and it goes only so far toward reform as the average man is willing to go toward self-reform. But the important thing about it, the net result of agitation in America for ten years, is the nationalization of the opinion of the average man. He now finds himself thinking, not merely in cities, not merely in states, but as an American. The great achievement of the past ten years is the exaltation of the individual by putting him in accord, not with the opinion of the leaders of business, of politics, of the college world, but the opinion of his kind, a coördinated, definitely formed characteristic American conviction of the meaning of life.

But the rise of the people is manifest otherwise than in politics. A certain amount of the complaint against the increased cost of living may be satisfied when one considers the increased standard of living. Men are no longer willing to eat and wear and read

and believe and enjoy and endure what they did twenty or even ten years ago. Eliminating from consideration for a moment the submerged tenth, and taking the average man who lives on \$75 a month, and one finds that the average man's taste is for much better things in food and clothes and houses and books and pleasures and comforts than it was twenty years ago. Millions of men are living on a scale now that was possible only to a few thousands before the Civil War. Modern plumbing, telephones, gas for cooking, and electric lights are no longer luxuries for the American masses — these things are comforts. They are required, not dreamed of. We are paying more for our meat than we ever paid before in a time of peace. Doubtless a few pennies on the pound are being stolen by the packers' trust; but we are paying the farmer more for the meat on the hoof — more in clothes and food and houses and books and creature comforts than any other farmer on earth ever received. We are paying more for our cotton than we have paid for fifty years. But we are paying the cotton spinner — not so well as we should to be sure — more in housing, food, clothing, and education for his children than any other cotton spinner ever received. We are paying more for our gold than ever we paid before; but much of the increased

price goes to the gold miner in better food, better cabins, better tools, and shorter hours than we gave to the men in the mines of '49. We are paying more for our houses than we paid for our houses twenty years ago; but they are better houses, and men in the building trades and the workers in the lumber camps and mines and forges receive a share of the increased price for our houses in increased comforts. Steam enters into all this; steam lightens the burdens of workmen. Steam shortens working hours; steam has converted the luxuries of our fathers into the comforts we demand. Steam has broadened our lives, bringing us books and newspapers and music and thousands of beautiful things. Steam has given us electricity and has made the nation a neighborhood. It has organized the public mind, making democracy articulate. In all these matters of better living, of more complete understanding, of higher aspiration, has steam been socialized. Only as steam manifests itself in great aggregations of capital that assume to dwell apart in a unique moral atmosphere, like kings and priests and warrior gods of old, is steam unsocialized. But even capital is passing rapidly under popular control. Another generation will see the worst of the struggle for the control of capital well finished; not that the millennium will come then

— not at all. As life widens, it finds new obstacles. Growth is struggle. "God fulfills himself in many ways." It is a dream to believe that greed may be abolished. In all the centuries lust has not been abolished, nor anger, nor hate, nor envy. Yet they are in chains. It is not visionary to assume if we go forward during this century as rapidly toward the socialization of steam as we went during the last century, that we may put the man who issues what the United States Supreme Court has seen fit to call "fictitious capital," or the man who floats bonds not based on actual valuation of property, on a footing with the man who violates a home or assaults a woman. We may put the man who manufactures impure food and poisonous drinks in the same category with the fence and the gambler. We may give the trust magnate who refuses to share exorbitant profits with his employés and his customers a social status with the burglar. We may fetter greed, as we have fettered our other human vices. And it will be done, as all our advancement in this life has been made, not by making laws, but by creating broader lives than our fathers knew.

And what a magnificent breeding place we have, here on this continent! The three fates, variation, segregation, and selection, may weave from our

social threads such cloth as the world has never seen. The best blood of the earth is here — a varied blood of strong indomitable men and women brought here by visions of wider lives. But this blood will remain a clean Aryan blood, because there are no hordes of inferior races about us to sweep over us and debase our stock. We are segregated by two oceans from the inferior races, and by that instinctive race revulsion to cross-breeding that marks the American wherever he is found. Our social laws permit the best to choose the best; our customs, our traditions, our ideals, all inspire youth to trust their human instincts, to select their mates, the fairest with the fairest, with little thought of caste or class, or of aught but good mating. Our aristocracy is not of wealth or of station; our leaders are the clean-bred children of a natural selection unknown before in human history. Our children grow up with the feeling of community strongly upon them. The “we” feeling is pressed upon them in the common schools, in the common playgrounds and in homes, linked to humanity as no other homes have ever been joined. The electric wire, the iron pipe, the street railroad, the daily newspaper, the telephone, the lines of transcontinental traffic by rail and water, intimate relations with the city, the state, and the federal gov-

ernment have made us all of one body — socially, industrially, politically. Under our quickened democratic institutions the common man has an equal vote with his uncommon neighbor. The democratic environment fairly burns the spirit of human brotherhood upon the growing child. The world is near him. There are no outlanders. It is possible for all men to understand one another; thus hatreds are minimized, and charity stimulated. Thus in a clean home, with wholesome food, in decent clothes, the average well-bred child enters the environment of our democracy. Wars do not mow down the first-born and degrade the breed. Competition gives his sinews all the strain they will stand. This child of the new century may be trusted to see visions — and to follow them. We of this generation have done somewhat to solve the problems that steam has brought to us. And we are by no means done with our day's work. Indeed it is but dawn in the new day of spiritual awakening. Let us touch those who still sleeping wear the joy of youth upon their faces and say, with the prophet of old: —

“Arise, shine; for thy light is come, and the glory of the Lord is risen upon thee.”

In the "Massachusetts Railroad and Railway Laws of 1908" we read:—

The provisions of this act shall not impair the rights of the commonwealth, as asserted or reserved in previous statutes; and the commonwealth may at any time during the continuance of the charter of a railroad corporation, after the expiration of twenty years from the opening of its railroad for use, purchase of the corporation, its railroad and all its franchise, property, rights and privileges, by paying therefor such amount as will reimburse to it the amount of capital paid in, with a net profit thereon of ten per cent. a year, from the time of the payment thereof by the stockholders, to the time of the purchase.

(Section 7) The commonwealth may at any time after one year's notice, in writing to a railroad corporation, take and possess its railroad franchise and other property and shall pay therefor such compensation as may be awarded by three commissioners, who shall be appointed by the supreme judicial court who shall be sworn to appraise the same justly and fairly, and who shall estimate and determine all damages sustained by it by such taking. A corporation which is aggrieved by their determination, may have its damages assessed by a jury in the superior court for the county of Suffolk, in the manner provided in section 90, chapter 48, of the revised laws.



FEDERAL JUDGES APPOINTED FROM 1901 TO 1909,  
WITH THOSE WHO INDORSED THEM AND  
SECURED THEIR APPOINTMENTS

SUPREME COURT OF THE UNITED STATES

Oliver Wendell Holmes, Massachusetts, Dec. 4, 1902. No papers.

William R. Day, Ohio, Feb. 25, 1903. No papers.

William H. Moody, Massachusetts, Dec. 17, 1906. No papers.

UNITED STATES CIRCUIT JUDGES

Francis C. Lowell, First Circuit, Boston, Mass., Feb. 23, 1905.  
Appt. recommended by Senators Lodge and Crane.

Alfred C. Coxe, Second Circuit, Utica, N.Y., June 3, 1902. Appt. recommended by Edmund Wetmore.

Henry G. Ward, Second Circuit, New York City, Dec. 17, 1907.  
Appt. recommended by Senators Platt and Depew; Judges Coxe, Townsend, and Lacombe.

Walter C. Noyes, Second Circuit, New London, Conn., Dec. 18, 1907. Appt. recommended by Senators Brandegee, Bulkeley, and Knox; Representatives Lilley and Russel, and Governor Woodruff.

Joseph Buffington, Third Circuit, Pittsburg, Dec. 11, 1906.  
Appt. recommended by all members of Congress from Pennsylvania except Palmer and Deemer; papers referred by Senator Penrose; recommended by State Judges and Andrew Carnegie.

Peter C. Pritchard, Fourth Circuit, Asheville, N.C., April 27, 1904. Thirty-three senators.

- John K. Richards, Sixth Circuit, Cincinnati, Feb. 25, 1903. No papers.
- Francis E. Baker, Seventh Circuit, Indianapolis, Jan. 21, 1902. Attorneys and bar associations, etc.; papers filed by Senator Fairbanks.
- William H. Seaman, Seventh Circuit, Sheboygan, Wis., Mar. 1, 1905. Appt. recommended by Senators Spooner and Quarles, and Judge Grosscup.
- Christian C. Kohlsaatt, Seventh Circuit, Chicago, Ill., Mar. 18, 1905. Appt. recommended by H. M. Snapp, M. C., Atty. General Moody, C. H. Robb, Asst. Atty. General, and various attorneys of Chicago.
- Willis Van Devanter, Eighth Circuit, Cheyenne, Wyo., Feb. 18, 1903. No papers.
- William C. Hook, Eighth Circuit, Leavenworth, Kan., Nov. 17, 1903. Senator Long, Senator McCumber, Senator Stone; Representatives Curtis, Campbell, Reeder, Miller, Scott, Calderhead, Bowersock, Marshall, and Spalding.
- Elmer B. Adams, Eighth Circuit, St. Louis, Dec. 12, 1905. Appt. recommended by Judges Van Devanter, Rodges, Phillips, Trieber, Marshall, Riner, Sanborn, and Amidon.

#### UNITED STATES DISTRICT JUDGES

- Alabama, Northern. Oscar R. Hundley, Birmingham, May 30, 1908. Judge Hundley's indorsements at the Senate. Indorsements filed at Dept. of Justice, since sending papers to Senate, from Jos. O. Thompson, Collector of Internal Revenue, Birmingham, Ala.; J. E. Shelby, President Birmingham Board of Trade; Jno. O. Turner, President Ashville College, Ashville, Ala.
- Alabama, Middle and Northern. Thos. Goode Jones, Montgomery, Dec. 17, 1901. Judge Jones indorsed by State

- Circuit Judges Richardson and Haralson; J. W. Dimmick, Nat. Committeeman; Stewart L. Woodford, New York.
- California, Northern. Wm. C. Van Fleet, San Francisco, Dec. 17, 1907. Judge Van Fleet indorsed by Senators Perkins and Flint, Cal., W. H. Beatty, Chief Justice, Sup. Court, Cal.; and Wm. W. Morrow, U. S. Circuit Judge, S. F.
- Colorado. Robert E. Lewis, Denver. Apr. 10, 1906. Judge Lewis recommended by Wm. Lennox, of Colorado Springs, letters transmitted by Senator N. B. Scott, with favorable recommendation; Chas. Nagel, lawyer, St. Louis; D. B. Fairley, Chairman Repub. State Cent. Com., Denver, Colo.
- Connecticut. James P. Platt, Hartford, Mar. 23, 1902. Judge Platt recommended by Wm. K. Townsend, U. S. Judge, Conn.; C. A. Russell, M. C.; Prof. Wayland, Dean of Faculty, Yale Law School.
- Florida, Northern. Wm. B. Sheppard, Pensacola, May 20, 1908. Judge Sheppard recommended by Hon. J. B. Whitfield, of Supreme Court of Florida; Hon. C. W. Russell, Asst. Atty. General, and others.
- Idaho. Frank S. Dietrich, Boise, Dec. 17, 1907. Judge Dietrich indorsed as to qualifications by Senator Heyburn; recommended by Jno. S. Bagley, ex-Atty. General of Idaho, and many state officials, judges, etc., and numerous lawyers, ministers, etc.
- Illinois, Northern. Kenesaw M. Landis, Chicago, Mar. 18, 1905. Judge Landis indorsed by Hon. F. E. Baker, U. S. Circuit Judge; A. B. Anderson, U. S. Dist. Judge, Indiana; ten state judges, Ill., and other Chicago officials and attorneys.
- Illinois, Eastern. Francis M. Wright, Urbana, Mar. 17, 1905. Note: Judge Wright was appointed Judge Court of Claims, D. C., on Jan. 13, 1903, on recommendation of Senator Hopkins and Speaker Cannon. His appointment as Judge in Ill., Eastern, was made on account of same recommendations.

- Indiana. Albert B. Anderson, Indianapolis, Dec. 8, 1902. Judge Anderson recommended by E. D. Crumpacker, M. C.; Jas. H. Jordan, Judge Sup. Court, Indiana, and eight other state judges; H. C. Pettit, U. S. Marshal.
- Iowa, Northern. Henry Thos. Reed, Crasco, Mar. 7, 1904. Judge Reed recommended by Hon. W. B. Allison and Hon. J. P. Dolliver, and five members of Congress.
- Kansas. John C. Pollock, Topeka, Dec. 1, 1903. Judge Pollock indorsed by state judges, senators, and attorneys (papers filed by Senator Long, of Kansas; D. T. Flynn, ex-Del. from Okla.; Gov. Ferguson, of Okla., S. R. Peters, ex-M. C.
- Kentucky, Eastern. A. M. J. Cochran, Maysville, Dec. 17, 1901. Papers filed by Senator Lindsay; indorsed by state judges, senators, bar associations, etc.
- Louisiana, Eastern. Eugene D. Saunders, New Orleans, Feb. 20, 1907. Indorsed by Chief Justice and Associate Justices Supreme Court, La., Senator McEnery, President Tulane University.
- Maine. Clarence Hale, Portland, July 1, 1902. Indorsed by Senators Hale and Frye, and Representatives Allen, Littlefield, and Powers.
- Massachusetts. Frederic Dodge, Boston, Feb. 23, 1905. Appt. recommended by Senators Lodge and Crane, Massachusetts.
- Michigan, Western. Loyal E. Knappen, Grand Rapids, Dec. 10, 1907. No papers.
- Minnesota. Page Morris, Duluth, July 1, 1903. Appt. recommended by Senators Nelson and Clapp; members of Congress, governor, etc.
- Minnesota. Milton D. Purdy, Minneapolis, July 6, 1908. Papers at the Senate.
- Missouri, Eastern. David P. Dyer, St. Louis, Apr. 1, 1907. Appt. recommended by Senator Warner; Jno. F. Phillips, U. S. Dist. Judge; Governor Folk, Mo.; and various state judges.

- Montana. William H. Hunt, Helena, April 19, 1904. No papers.
- Nevada. Edward S. Farrington, Carson City, Jan. 10, 1907, Appt. recommended by Senator Nixon, Governor Sparks, and Hon. W. M. Stewart.
- New Jersey. Joseph Cross, Elizabeth, Mar. 17, 1905. Appt. recommended by Senators Kean and Dryden.
- New York, Northern. George W. Ray, Norwich, Dec. 8, 1902. Appt. recommended by W. H. Johnson, attorney, and Titus Sheard.
- New York, Southern. George C. Holt, New York City, Mar. 3, 1903. Appt. recommended by Hon. Addison Brown, ex-U. S. Judge; Jas. B. Reynolds, Coudert Brothers, Andrew Carnegie, B. S. Coler.
- New York, Southern. Charles M. Hough, New York City, June 27, 1906. Appt. recommended by E. B. Whitney, ex-Asst. A. G.; George W. Wickersham, and numerous other members of New York City bar; Wm. G. Choate, Henry W. Taft, H. G. Ward.
- New York, Eastern. Thos. Ives Chatfield, Brooklyn, Jan. 9, 1907. Appt. recommended by U. S. Atty. Vreeland, N. J.; Editor *Brooklyn Daily Times*; A. J. Rose, attorney; also re-filed letters from Senator Platt, Hon. E. B. Thomas, and others, originally filed for appt. as judge, Southern New York.
- Ohio, Northern. Robert W. Taylor, Cleveland, Feb. 1, 1905. Appt. recommended by Jas. Kennedy, M. C.; J. J. Sullivan, U. S. Atty.; Myron T. Herrick, and Josiah Strong.
- Ohio, Southern. John E. Sater, Columbus, May 30, 1906. Papers at the Senate.
- Oklahoma, Eastern. Ralph E. Campbell, McAlester, Jan. 13, 1908. Appt. recommended by Gov. Frantz, Okla.; State Chairman Hunter; O. A. Wells, Sec'y State Cent. Com.; also many lawyers and territorial officials.

- Oklahoma, Western. John H. Cotteral, Guthrie, Jan. 13, 1908. No papers.
- Oregon. Charles E. Wolverton, Portland, Jan. 10, 1905. Appt. recommended by Hon. Wm. B. Gilbert, U. S. Circuit Judge, Portland; Hon. Wm. W. Morrow, U. S. Circuit Judge, San Francisco; Francis J. Heney, lawyer, San Francisco.
- Pennsylvania, Eastern. James B. Holland, Philadelphia, Apr. 19, 1904. Appt. recommended by Senators Quay and Penrose, nine members of Congress, and Gov. Pennypacker.
- Pennsylvania, Middle. Robert W. Archbald, Scranton, Dec. 17, 1901. Appt. recommended by Senator Quay, Representatives Demmer, Grow, and Kirkpatrick; U. S. Judges Acheson and McPherson; and several state judges.
- Pennsylvania, Western. James S. Young, Pittsburg, Feb. 1, 1908. Appt. recommended by Senators Knox and Penrose.
- Tennessee, Eastern and Middle. Edward T. Sanford, Knoxville, May 18, 1908. Appt. recommended by W. D. Beard, Ch. Justice, and Jno. K. Shields, Asso. Justice, Sup. Court, Tenn.; C. H. Harvey, President Knoxville Railway & Light Co., and Grim and Webb, lawyers, Knoxville.
- Tennessee, Western. John E. McCall, Memphis, Jan. 17, 1905. Appt. recommended by Representatives Cannon, Brownlow, Hemenway, Gibson, Richardson, Pierce, Jenkins, Benton, and Bingham; U. S. Judges Evans and Clark.
- Texas, Southern. Waller T. Burns, Houston, July 1, 1902. Papers filed by Senators Lodge, Millard, and Quay; the latter speaks of "my friend Burns"; Cecil A. Lyon, Chairman Rep. State Ex. Com., and eight Congressional Chairmen of Committees.
- Vermont. James L. Martin, Brattleboro, Dec. 11, 1906. Appt. recommended by Senators Proctor and Dillingham, and the two members of Congress from Vermont.
- Virginia, Western. H. Clay McDowell, Lynchburg, Dec. 18, 1901.

- Appt. recommended by Rep. Boreing, C. B. Slemp; state judges and senators; President United States Civil Service Commission (Proster); president and officers of L. & N. Railway.
- Washington, Eastern. Edward Whitson, Spokane, Mar. 14, 1905. Appt. recommended by Senators Ankeny and Piles; former Senator A. G. Foster; Representatives Jones, Cushman, and Humphrey; state judges, lawyers, etc.
- West Virginia, Northern. Alston G. Dayton, Philippi, Mar. 14, 1905. No papers.
- West Virginia, Southern. Benjamin F. Keller, Bramwell, Dec. 17, 1901. Appt. recommended by Senator Scott, and W. M. O. Dawson, Sec'y of State and State Chairman.
- Wisconsin, Eastern. Joseph V. Quarles, Milwaukee, Mar. 6, 1905. Appt. recommended by Senator Spooner.
- Wisconsin, Western. Arthur L. Sanborn, Madison, Jan. 9, 1905. Appt. recommended by Senator Spooner; Judges Harlan, Jenkins, Grosscup, Baker, Dyer, and Bunn.

## COURT OF CLAIMS

- Stanton J. Peelle, Indiana, Jan. 1, 1906. No papers. Judge Peelle was originally appointed Judge Court of Claims, March 28, 1892.
- Fenton W. Booth, Illinois, Mar. 17, 1905. Judge Booth recommended by Speaker Cannon, James B. Ricks, Chief Justice Supreme Court, Illinois; J. H. Cartwright and J. W. Wilkins, Justice Supreme Court, Illinois.
- George W. Atkinson, West Virginia, Jan. 16, 1906. Judge Atkinson recommended by Senator Scott, Joseph H. Gaines, M. C.; Albert B. White, governor of West Virginia; Vice-President Fairbanks; Senator Elkins, and four representatives from West Virginia.
- Samuel S. Barney, Wisconsin, Jan. 1, 1906. Judge Barney

recommended by Senator Spooner, and eleven Republican Members of Congress from Wisconsin.

As showing how little money counts in American political life, the expenses of the Interstate Commerce Law Convention, from November, 1900, until June, 1906, is herewith appended. During that time the sentiment was organized that forced the passage of the Hepburn railroad law. The recapitulated list of expenses and disbursements follows:—

RECAPITULATION AS TO INTERESTS

Agricultural . . . . .	\$ 992 50	
Grain, Hay, and Commission . . . . .	1,135 00	
Boards of Trade and Commercial Bodies . . . . .	9,475 00	
Flour Millers . . . . .	4,425 02	
General Manufacturers . . . . .	1,657 00	
Live Stock . . . . .	1,200 00	
Lumber . . . . .	2,345 00	
Individuals and Concerns . . . . .	1,625 00	
		<u>\$22,855 02</u>

DISBURSEMENTS

For Printing . . . . .	\$4,216 61	
Stationery . . . . .	704 66	
Postage . . . . .	2,906 98	
Telegrams . . . . .	321 48	
Express . . . . .	130 37	
Exchange . . . . .	7 18	
Chairman's Traveling Expenses . . . . .	1,487 55	
Chairman's Clerical Assistance . . . . .	1,767 44	
Secretary's Salary . . . . .	7,112 25	
Secretary's Traveling Expenses . . . . .	2,580 90	
Secretary's Office Expenses . . . . .	259 92	
Secretary's Clerical Assistance . . . . .	393 27	
Convention, Executive Committee and Incidental Expenses . . . . .	1,448 37	
Total Disbursements . . . . .		<u>\$23,336 58</u>
DEFICIT . . . . .		<u>\$481 56</u>



## THE MUNICIPAL RECALL

Below will be found the recall law, as it is used in cities having the Des Moines plan of government by commission. About five million people now are living in cities or in a state having the power to recall certain public officers under this or similar acts.

Sec. 18. The holder of any elective office may be removed at any time by the electors qualified to vote for a successor of such incumbent. The procedure to effect the removal of an incumbent of an elective office shall be as follows: A petition signed by electors entitled to vote for a successor to the incumbent sought to be removed, equal in number to at least twenty-five per centum of the entire vote for all candidates for the office of mayor at the last preceding general municipal election, demanding an election of a successor of the person sought to be removed shall be filed with the city clerk, which petition shall contain a general statement of the grounds for which the removal is sought. The signatures to the petition need not all be appended to one paper, but each signer shall add to his signature his place of residence, giving the street and number. One of the signers of each such papers shall make oath before an officer competent to administer oaths that the statements therein made are true as he believes, and that each signature to the paper appended is the genuine signature of the person whose name it purports to be. Within ten days from the date of filing such petition the city clerk shall examine and from the voters' register ascertain whether or not said petition is signed by the requisite number of qualified electors, and, if necessary, the council shall allow him extra help for that purpose; and he shall attach to said petition his certificate, showing the result of said examination. If by the clerk's certificate the petition is shown to be insufficient, it may be amended within ten days from the date of said certificate. The clerk shall, within ten days after such amendment,

make like examination of the amended petition, and if his certificate shall show the same to be insufficient, it shall be returned to the person filing the same; without prejudice, however, to the filing of a new petition to the same effect. If the petition shall be deemed to be sufficient, the clerk shall submit the same to the council without delay. If the petition shall be found to be sufficient, the council shall order and fix a date for holding the said election, not less than thirty days or more than forty days from the date of the clerk's certificate to the council that a sufficient petition is filed.

The council shall make, or cause to be made, publication of notice and all arrangements for holding such election, and the same shall be conducted, returned and the result thereof declared, in all respects as are other city elections. The successor of any officer so removed shall hold office during the unexpired term of his predecessor. Any person sought to be removed may be a candidate to succeed himself, and unless he requests otherwise in writing, the clerk shall place his name on the official ballot without nomination. In any such removal election, the candidate receiving the highest number of votes shall be declared elected. At such election if some other person than the incumbent receives the highest number of votes the incumbent shall thereupon be deemed removed from the office upon qualification of his successor. In case the party who receives the highest number of votes should fail to qualify, within ten days after receiving notification of election, the office shall be deemed vacant. If the incumbent receives the highest number of votes he shall continue in office. The same method of removal shall be cumulative and additional to the methods heretofore provided by law. —

The following is a copy of the Nebraska law — which is practically a copy of the Oregon, Idaho, and Nevada acts — giving the people a direct vote upon United States senator. After the

August primaries have nominated the senatorial candidates of the two parties, their names are put upon the ballot, as provided in the following section:—

Sec. 9. (United States senator.) At the general election immediately preceding the expiration of the term of a United States senator from this state, the electors shall, by ballot, express their preference for some person for the office of United States senator. The votes to be canvassed and returned in the manner hereinafter provided.

Before the primary candidates for the legislature are pledged to vote for the people's choice in this manner:—

Sec. 117f<sup>1</sup> (Same — Legislative candidates.) Any elector seeking nomination as a candidate for the legislature at the primaries where such candidates are chosen may include in the application to have his name placed upon the official primary ballot provided for in Section 5866 (?) of Cobbe's Annotated Statutes for 1907 (117f) any one of the two following statements, but if he does not do so the officer with whom the application is filed shall not, on that account, refuse to file his petition or place his name on the official ballot: Statement No. 1. I hereby state to the people of Nebraska, as well as to the people of my legislative district, that during my term of office I will always vote for that candidate for United States senator in Congress who has received the highest number of the people's votes for that position at the general election next, preceding the election of a senator in Congress, without regard to my individual preference. . . . (Signature of the candidate for nomination.) If the candidate shall be unwilling to sign the above statement, then he may sign the following statement as a part of his petition: Statement No. 2. During my term of office I shall consider the vote of the people for United States senator in Congress as nothing more than a recommendation, which I shall be at



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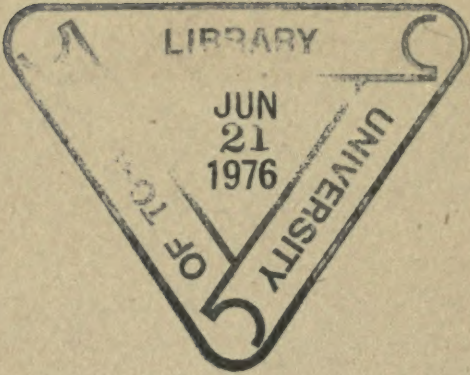
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